

United States
Circuit Court of Appeals

For the Ninth Circuit.

JOSEPHINE GONZALEZ,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JAN 24 1947

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

GLADYS TOWLES ROOT,
631 A. G. Bartlett Bldg.,
215 West Seventh St.,
Los Angeles 14, Calif.

For Appellee:

JAMES M. CARTER,
United States Attorney,

ERNEST A. TOLIN,

WALTER S. BINNS,
Assistant U. S. Attorneys,
600 U. S. Post Office & Court House
Bldg.,
Los Angeles 12, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

United States District Court
Southern District of California
Central Division

No. 18244

September, 1945, Term

THE UNITED STATES OF AMERICA

vs.

JOSEPHINE GONZALEZ and
JESUS SANTANA

No. 18244. Viol.: United States Code, Title 21, Section 174, Possession of narcotics; United States Code, Title 26, Section 2553(a), Purchase of narcotics; United States Code, Title 18, Section 88, Conspiracy.

INDICTMENT

In The Name And By The Authority Of The United States of America, the Grand Jury for the Southern District of California, at Los Angeles, presents on oath in open court:

That Josephine Gonzalez and Jesus Santana, hereinafter called the defendants, heretofore, to-wit: On or about October 9, 1945, in Los Angeles County, California, within the Central Division of the Southern District of California, did wilfully, unlawfully, and feloniously receive, conceal, and facilitate the transportation and concealment after importation of a certain narcotic drug, to-wit: approximately 119 ounces of smoking opium, which

said smoking opium, as the defendants well knew, had been imported into the United States of America contrary to law;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [2]

COUNT TWO

And the grand jury aforesaid, upon its oath aforesaid, does further present:

That Josephine Gonzalez and Jesus Santana, hereinafter called the defendants, heretofore, to-wit: On or about October 9, 1945, in Los Angeles County, California, within the Central Division of the Southern District of California, did knowingly, wilfully and unlawfully, and feloniously purchase and distribute a certain narcotic drug mentioned in United States Code, Title 26, Section 2550(a), to-wit: approximately 119 ounces of smoking opium, which said smoking opium was not then and there in or from the original stamped package containing said smoking opium;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [3]

COUNT THREE

And the grand jury aforesaid, upon its oath aforesaid, does further present:

That Josephine Gonzalez and Jesus Santana, hereinafter called the defendants, heretofore, to-

wit: Prior to the date of the commission of the overt acts hereinafter set forth and continuously thereafter to and including October 11, 1945, in the County of Los Angeles, State of California, within the Central Division of the Southern District of California, did knowingly, wilfully, unlawfully, corruptly, and feloniously conspire, combine, confederate, arrange, and agree together and with each other and with divers other persons, whose names are to the grand jury unknown, to commit offenses against the United States of America and the laws thereof, to-wit:

(1) Wilfully, unlawfully, and feloniously to receive, conceal, and facilitate the transportation and concealment after importation of a certain narcotic drug, to-wit: approximately 119 ounces of smoking opium, which said smoking opium, as the defendants then and there well knew, had been imported into the United States of America contrary to law;

(2) Knowingly, wilfully, unlawfully, and feloniously to purchase, sell, dispense, and distribute a certain narcotic drug, to-wit: approximately 119 ounces of smoking opium, which said smoking opium was not then and there in or from the original stamped package containing said smoking opium;

That after the formation and in furtherance of said conspiracy and to effect the objects and purposes thereof the defendants did commit various overt acts, among which were the following:

(1) On or about October 9, 1945, defendant

Josephine Gonzalez went to the Model Auto Court, located at 2631 Garvey Boulevard, Alhambra, California;

(2) On or about October 9, 1945, defendant Josephine Gonzalez at approximately 9:00 p.m., drove from Alhambra, California, to La Canada, California; [4]

(3) On or about October 9, 1945, in Los Angeles County, California, defendant Josephine Gonzalez concealed sixteen five-ael brass cans containing approximately 112 ounces of smoking opium in a suitcase;

(4) In the late evening of October 9, 1945, or the early morning of October 10, 1945, defendant Jesus Santana drove to the Model Auto Court, located at 2631 Garvey Boulevard, Alhambra, California;

(5) On or about October 9, 1945, in Los Angeles County, California, defendant Jesus Santana concealed a five-ael can of smoking opium near the glove compartment of a Dodge automobile;

(6) On or about October 9, 1945, defendant Jesus Santana spent the evening in an auto trailer, located at the Model Auto Court, 2631 Garvey Boulevard, Alhambra, California;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

/s/ CHARLES H. CARR,

United States Attorney.

[Endorsed]: Filed Jan. 9, 1946. [5]

upon her arrest the aforesaid officers opened her suitcase and searched it without showing her a search-warrant; that further upon information and belief she alleges that the officers had no search-warrant at the time nor had they obtained one previously; that she made [9] no objection to the search because she feared the officers, and thought such objection would be useless; that such search without a warrant is in violation of her rights under the fourth and fifth amendments to the constitution of the United States of America.

/s/ JOSEPHINE GONZALEZ.

Subscribed and sworn to before me this 16th day of February, 1946.

[Seal] /s/ N. A. MARSH,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires July 2, 1949. [10]

POINTS AND AUTHORITIES

“Evidence illegally obtained by search of premises without a warrant can not be used to support a claim of probable cause for belief that the offense was being committed in the presence of officers justifying them in making the arrest without a warrant, and in searching premises without a warrant, as incident to contemporaneous lawful arrest.”—U. S. v. Lee (1936), 83 Fed. (2d) 195.

“Evidence illegally obtained cannot be used to support the claim of probable cause.”—Wakkuri v. U. S., 67 Fed. (2d) 844, CCA 6.

“Belief, however well founded, that an article

sought is concealed in a dwelling house (and this would apply as well to any article of personal property) furnishes no justification for a search of that place without a warrant. And such searches are held unlawfully made notwithstanding facts unquestionably showing probable cause.”—*Agnello v. U. S.* 269 U. S. 20, 46 Sup. Ct. 4, 70 L. Ed. 145, 51 A.L.R. 409.

“Belief that an article sought is concealed in a dwelling does not justify search without a warrant, notwithstanding facts unquestionably show probable cause.”

“The presumption under which possession of narcotic drug authorizes [11] conviction of unlawful importation of drug . . . cannot aid officers in believing that the crime was being committed in their presence as the basis for arrest and search without a warrant.”—*U. S. v. Tom Yu*, 1 Fed. Supp. 357.

“The Constitutional provisions for the security of person and property are to be liberally construed, and it is the duty of the courts to be watchful for the Constitutional rights of the citizen, and against any stealthy encroachments thereon.”—*Boyd v. U. S.*, 116 U. S. 616. See *Gouled v. U. S.*, 255 U. S. 305.

In *Carrol v. U. S.*, 39 A.L.R. 807 (containing an annotated discussion of the problem), a warrant without probable cause for its issuance was held unjustified. The court said for there to be probable cause for its issuance, there must be a reasonable

ground to believe the party guilty, without the evidence sought to be obtained through the search.

It boils down to this: If the officers had probable cause for arrest without any reference to the results of the search without a warrant, the results might be admitted to evidence, but if the evidence furnishes any part of the probable cause for arrest, then the search is clearly illegal, even as an incident to arrest, and the authorities hold that such evidence can never be admitted. It seems clear here that the 16 cans of alleged opium found in the suitcase formed a part of the probable cause for arrest of the defendant Josephine Gonzalez; therefore it is improper to use that evidence in any way.

[Endorsed]: Filed Feb. 16, 1946. [12]

At a stated term, to-wit: The February Term, A.D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 19th day of February in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

This cause coming on for hearing on motion of defendant Gonzalez to suppress evidence, filed February 16, 1946; and for trial of the defendants

Josephine Gonzalez and Jesus Santana; Walter S. Binns, Esq., Assistant U. S. Attorney, appearing for the Government; Gladys T. Root appearing for the defendant Gonzalez; J. B. Mandel, Esq., appearing for the defendant Santana; the said defendants being present in custody:

Attorney Root presents said motion to suppress, etc. The Court makes a statement and orders said motion to suppress denied, with exception to the defendant Gonzalez.

It is ordered that this cause be, and it hereby is, continued to February 20, 1946, at 9:30 a.m., for trial of both defendants, and the witnesses are admonished to return at that time. [14]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Josephine Gonzalez

Guilty as charged in count one of the Indictment, and

Guilty as charged in count two of the Indictment; and

We, the Jury in the above-entitled cause, find the defendant, Jesus Santana

Guilty as charged in count one of the Indictment, and

Guilty as charged in count two of the Indictment.

Dated: Los Angeles, California, February 21, 1946.

/s/ NOBLE M. DAWSON,
Foreman.

[Endorsed]: Filed Feb. 21, 1946. [21]

[Title of District Court and Cause.]

JUDGMENT AND COMMITMENT AND
PROBATIONARY ORDER

Criminal Indictment in three counts for violation of U.S.C., Title 21, 174; 26, 2553(a); and 18 U.S.C. 88.

On this 18th day of March, 1946, came the United States Attorney, and the defendant Josephine Gonzalez appearing in proper person, and by her attorney, Gladys T. Root; and,

The defendant having been convicted on verdict of guilty of the offenses charged in the Indictment in the above-entitled cause, to-wit: Count one: * * did wilfully, unlawfully, and feloniously receive, conceal, and facilitate the transportation and concealment after importation of approximately 119 ounces of smoking opium, etc., and Count two: * * did knowingly, wilfully, unlawfully, and feloniously purchase and distribute a certain narcotic drug, etc., to-wit: approximately 119 ounces of smoking opium, which was not then and there in or

from the original stamped package containing said smoking opium; as more fully set forth in said two counts of the Indictment; and the defendant having been now asked whether she has anything to say why judgment should not be pronounced against her, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of three (3) years in a penitentiary and pay a fine unto the United States of America in the sum of ten (\$10.00) dollars on count one; and

It Is Further Ordered that imposition of sentence on count two is suspended for the period of five years, which period is to commence at the expiration of said sentence on count one, and the defendant placed on probation for that period on the following terms and conditions: That defendant shall not violate any laws of the United States, State, County or City in which she lives during that period; that she shall report to the probation officer of this court at such times and places as he may direct, and follow such rules and regulations as he may prescribe for her conduct.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer

and that the same shall serve as the commitment herein on count one.

/s/ BEN HARRISON,

United States District Judge.

A True Copy. Certified this 18th day of March, A.D., 1940.

/s/ EDMUND L. SMITH,

Clerk.

[Endorsed]: Filed March 18, 1946. [23]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Josephine Gonzalez, Los Angeles, County Jail, Los Angeles, California.

Name and Address of Appellant's Attorney: Gladys Towles Root, 215 West Seventh Street, Suite 631 Bartlett Building, Los Angeles, California.

Offense: Two counts, violation of United States Code, Title 21, Section 174, Possession of Narcotics; United States Code, Title 26, Section 2553(a), Purchase of Narcotics.

Count I charges defendant as being in possession of a certain narcotic drug.

Count II charges defendant with purchase of a certain narcotic drug.

Date of Judgment: March 18, 1946.

Brief description of judgment or sentence:

Defendant was adjudged guilty of Count I, three years in the penitentiary; Count II, sentence suspended, five years probation.

Name of prison where now confined: Los Angeles County Jail, Los Angeles, California.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

Dated: March 22, 1946.

/s/ JOSEPHINE GONZALEZ,
Appellant.

Grounds of Appeal:

1. The judgment and finding of the Trial by jury is contrary to the law and the evidence.
2. The evidence is insufficient to establish that the defendant committed the offense charged in Counts I and II of the indictment.
3. The evidence was and is insufficient to establish that the defendant committed the offense charged in Counts I and II of the indictment.
4. That there is a complete and irreconcilable variance between the evidence adduced and the charges contained in Counts I and II of the indictment, respectively.

5. That the Court committed prejudicial errors of law during the trial of the case in its rulings concerning the reception of certain evidence over Appellant's objection and to which rulings exceptions were taken.

6. That the Court misdirected the jury in points of law.

[Endorsed]: Filed March 22, 1946. [37]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 54 inclusive contain full, true and correct copies of Indictment; Minute Order Entered January 28, 1946; Notice of Intent to Make Motion to Suppress Evidence; Minute Orders Entered February 19, 1946, February 20, 1946, and February 21, 1946; Verdict; Minute Order Entered March 18, 1946; Judgment and Commitment; Defendant Gonzales' Requested Instructions; Notice of Appeal; Petition for Extension of Time to Settle Bill of Exceptions; Order Extending Time to Settle Bill of Exceptions; Stipulation and Order to File Reporter's Transcript in Lieu of Bill of Exceptions; Designation of Contents of Record on Appeal; Praecept and Stipula-

tion and Order for Transmission of Original Exhibits which, together with Original Reporter's Transcript and Original Government's Exhibits 1 to 15 inclusive, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$15.30 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 7th day of October, A. D. 1946.

[Seal] EDMUND L. SMITH,
Clerk,

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

(Testimony of A. V. Beckner.)

Q. When you say that you saw the defendant Josephine Gonzalez, are you speaking of the lady that is sitting at the left corner of the opposite table? A. I am.

Q. Where did you first see her on that day?

A. At an auto trailer court at 2631 Garvey Boulevard in the City of Alhambra, at about 7:30 p. m. on that date.

Q. What auto trailer court?

A. The name of the place is the Model auto trailer court.

Q. Where did you see her in that auto court?

A. I saw her driving a Plymouth Sedan first on that evening, drive into the auto trailer court to park alongside of an auto trailer which had been parked there.

Q. Then what did she do? [4]

A. She got out of the auto trailer—she got out of the vehicle and entered the auto trailer.

Q. Did you observe whether or not she had anything in her hand when she went in?

A. She did not have anything.

Q. Now, then, about what time of day was this?

A. About 7:30 p. m.

Q. Did you observe her again on that day?

A. Yes. I observed her in the auto trailer at about 8:15 or 8:20.

Q. And after you observed her at about 8:15 when did you next see her?

A. At about 9 o'clock when she left the trailer.

Q. When you observed her about 8:15 what was she doing?

(Testimony of A. V. Beckner.)

A. Lying on a bed in the trailer reading a magazine.

Q. When you saw her about 9 o'clock what was she doing?

A. She left the trailer and got into this car and started driving over——

Q. Did you observe her leave the trailer and get into this car? A. I did.

Q. Did you observe her carrying anything?

A. Nothing that I could see. [5]

Q. This was evening, was it not?

A. It was.

Q. How close were you to her?

A. When she left I was approximately 100 feet or 125 feet from the auto trailer.

Q. Did you have anyone with you during this time, between 7:30 and 9 o'clock? A. Yes.

Q. Who was with you?

A. Sergeants Russell and Reid.

Q. And by whom are they employed?

A. By the Los Angeles Police Department in the Narcotic Detail.

Q. I think you testified that the defendant Josephine Gonzalez came out of the trailer and got into a gray sedan. Can you describe the car a little more particularly than that?

A. It was maroon, a Plymouth, four-door sedan, No. 1-V-9767.

Q. Now then, after you saw the defendant Gonzalez get into that car what occurred then?

A. She drove away down on to Garvey Boule-

22 Josephine Crossland - Vol. 1
(Testimony of A. V. Beckner.)

vard, and headed towards the City of Los Angeles on Ramona Boulevard, down into the Civic Center; through the Civic Center over North Spring Street, past this building to Sunset and over [6] Sunset to North Broadway. Over North Broadway to Avenue 21; north on Avenue 21 to the end of the street, which is a dead end street. She made a complete turn and came back to Baranca Street, I believe, and over to San Fernando Road. Out San Fernando Road to the intersection of Verdugo. Out Verdugo Road through Glendale, Montrose and into the city of La Canada, where she turned north on Indiana Street and proceeded about one block and made a right turn into MacArthur Street.

Q. I presume from your testimony you were following her in a car? A. Very closely, yes.

Q. Was anyone with you in the car?

A. Yes; the two men that I already mentioned.

Q. Now, what occurred at MacArthur Street in La Canada?

A. She parked the car about 200 feet into the street in front of a house.

Q. Then what occurred?

A. We went on by the place. We came back and we pulled into MacArthur Street and up to the vehicle.

Q. Then what occurred?

A. She was found in the rear seat of the car and as we drove up she started to get out onto the road.

Q. Did you approach her? A. I did. [7]

(Testimony of A. V. Beckner.)

Q. Did you have a conversation with her?

A. I did.

Q. Who was present when you had your conversation besides yourself and the defendant Gonzalez?

A. The two sergeants already mentioned.

Q. Will you tell us to the best of your ability what was said by you and what was said by the defendant Gonzalez and what, if anything, was said by the two sergeants?

A. I first asked her about the ownership of the car. She stated that it did not belong to her; that she had borrowed it from a man by the name of Santana. That in September she had had a wreck with her car and that was the reason why she was driving another man's car. She stated she had known this man for some period of time.

I asked her where he could be found and she stated that he was over at an auto trailer court at Alhambra, and that he would be found in this auto trailer there which belonged to her.

Q. Pardon me. Well, we will go back for a moment. At the time you were at this auto trailer court between 7:30 and 9, did you see the defendant Santana? A. I did not.

Q. You looked into the trailer. Did you see the defendant Santana? A. I did not. [8]

Q. Now, did you remove the owner's certificate from the maroon Plymouth Sedan in which you found Mrs. Gonzalez? A. I did.

Q. Do you have it with you? A. I do.

(Testimony of A. V. Beckner.)

Mr. Binns: Your Honor, I have here a registration card for the State of California for the year 1945. I ask that it be marked as Government's first exhibit for identification.

The Court: It will be so marked.

(The document referred to was marked as Plaintiff's Exhibit No. 1, for identification.)

Q. By Mr. Binns: Mr. Beckner, I show you Government's Exhibit No. 1 for identification. Is that the registration certificate you took from the car in which you found Mrs. Gonzalez?

A. Yes, it is.

Q. How can you identify it?

A. By the name that appears on it. "Jesus G. Santana, Postoffice Box 1174, Calexico, California" and the license number is the same that was on the vehicle.

Mr. Binns: May this be admitted in evidence at this time, your Honor?

The Court: It may be admitted.

The Clerk: Plaintiff's Exhibit 1 in evidence.

(The document referred to was marked as Plaintiff's Exhibit 1, and was received in evidence.) [9]

Q. By Mr. Binns: Now then, you were telling of a conversation you had with the defendant Gonzalez there, in which she said the car belonged to Mr. Santana, and that her own car had been wrecked. Did you have any further conversation with her?

(Testimony of A. V. Beckner.)

A. Yes. She said, "You can go to the telephone right now and you can call him up and he will be there and you can verify the fact that he is the owner of the car;" and she said, "he allowed me to drive the car."

Q. Do you recall anything else at this time that was said?

A. Yes. In the back of the car I observed a gray colored suitcase and I tried the lock on it and it was locked and I asked the defendant who it belonged to and she stated it belonged to her.

Mr. Binns: May I have this gray suitcase marked as Government's next in order for identification?

The Clerk: Government's Exhibit 2 for identification.

(The suitcase referred to was marked as Plaintiff's Exhibit No. 2, for identification.)

Q. By Mr. Binns: You can observe the gray suitcase sitting here. Is that the gray suitcase you have been testifying concerning?

A. Yes, it is.

Q. Will you tell us what further occurred? [10]

A. I then asked her if she had the key for it and she reached into a handbag and she produced this leather key container, which has other keys on it, and she selected one small key which was on here, and indicated that that would be the key which would open the suitcase.

Mr. Binns: We have a key container, your Honor, containing certain keys and ask that it be

(Testimony of A. V. Beckner.)

marked Government's next in order for identification.

The Court: Why not admit it in evidence? The witness has identified it.

Mr. Binns: I offer it for admission then and I offer the suitcase.

The Court: Both may be received.

(The articles referred to were marked as Plaintiff's Exhibits Nos. 2 and 3, and were received into evidence.)

Q. By Mr. Binns: I show you this small key and ask you is that the key which you previously testified was attached to that key container?

A. That appears to be the key, yes.

Q. This rope and this ticket, were they on the key when you first saw it? A. They were not.

Mr. Binns: May we remove those, your Honor?

The Court: Why not put the key in the lock and make it all a part of the one exhibit? [11]

Mr. Binns: All right, I will offer this key as Exhibit 2-A.

The Court: They have previously been admitted separately. I simply thought you could put the key into the lock and leave it there.

Q. By Mr. Binns: After you secured the key what did you do?

A. I took the suitcase out of the car, unlocked it, opened it up, and I found a package on the inside of it.

Mrs. Root: There will be an objection to any testimony relative to the contents of the suitcase

(Testimony of A. V. Beckner.)

on the ground that there was not a search warrant or foundation shown that there was a search warrant obtained and that, therefore, the testimony is irrelevant, incompetent and immaterial.

The Court: Objection overruled and exception note.

Q. By Mr. Binns: When you opened the suitcase will you tell us what you found therein?

A. I found a bag and upon opening the bag I found a carton and that was tied with rope. I opened the carton and there were 16 metal cans in the carton.

Q. Was there anything else in the suitcase besides that carton containing the metal cans?

A. Yes. There was an object which appeared to be a woman's sun suit or something of that nature.

Q. Is that the article? [12]

A. Yes, that is it.

Q. Was there anything else in there besides the package and that woman's sun suit?

A. That is all.

Mr. Binns: Your Honor, may we call the chemist from Mr. Love's office out of order to identify this package? He is the chemist from San Francisco.

The Court: According to the opening statements by both parties there seemed to be no dispute that opium was found.

Mr. Mandel: We have no objection.

Mrs. Root: I have no objection.

(Testimony of A. V. Beckner.)

The Court: In other words, is it necessary to call a chemist?

Mr. Mandel: No, it is not as far as we are concerned. We will waive the calling of the chemist.

Mrs. Root: Perfectly all right with us.

Mr. Binns: I ask counsel to stipulate if the chemist were called to the stand he would testify that after examining the 16 cans which were sent to him, he sealed them in this parcel and that this parcel is the parcel he sealed them in.

Mr. Mandel: So stipulated.

Mr. Binns: Mrs. Root, will you so stipulate?

Mrs. Root: Defendant will so stipulate that he would so testify. [13]

Mr. Binns: May the record show the parcel is now being opened—may this be marked as Government's exhibit next in order for identification?

The Clerk: Plaintiff's Exhibit 5 for identification.

Mr. Binns: May the record show that I am now opening Government's Exhibit 5 for identification?

Q. Mr. Beckner, I call to your attention the contents of Government's Exhibit 5 and ask you if you have ever seen those cans before?

A. Yes, sir. These are the cans——

Q. Tell us how many there are?

A. There are 15 cans here.

Q. How do you know that those are the cans that you saw?

A. They bear my marking on the top of each tin.

(Testimony of A. V. Beckner.)

Q. Do they bear any other marking?

A. The date 10-9-45.

The Court: Are those the cans that you found in this suitcase?

The Witness: They are.

Mr. Binns: May these be admitted in evidence at this time, your Honor?

The Court: They may be admitted.

Mrs. Root: Object on the same ground.

The Court: Same ruling and exception noted.

(The article referred to was marked as Plaintiff's Exhibit No. 5 and was received in evidence.)

Mr. Binns: May I pass one can to the jury, your Honor?

The Court: Certainly.

Q. By Mr. Binns: Now then, Mr. Beckner, after you had found Government's Exhibit 5 was there any further conversation with the defendant Gonzalez?

A. I asked the defendant if she knew what the contents were and she stated she did not—she had never seen it before. I asked her if she did not know it was opium and she said, "No," she didn't know what opium was. I asked her if she had put it into the suitcase and she said, "No." I asked her if she locked the suitcase and she said, "No."

I asked her about the ownership of the bag again and she said, "Yes, the bag belonged to her," but she didn't know how the opium got in there. That

(Testimony of A. V. Beckner.)

was about the extent of the conversation regarding the opium at that point.

Q. Now then, what occurred?

A. I asked her what she was doing parked up there in the dark that late at night in the back seat of the vehicle and she stated she had come up there to visit her daughter who lived nearby, and upon arriving there she decided it was too late to go in and she was going to spend the night in the vehicle. That was about the extent of the conversation at that point. [15]

Q. Then what did you do?

A. We then drove back to Alhambra, to the auto trailer court at 3621 Garvey Boulevard.

Q. That is the same one you testified concerning previously? A. It is.

Q. What did you do after you got there?

A. We pulled up there and we noted that there was an automobile parked alongside of the trailer where she previously parked her car.

Q. Can you describe the second automobile?

A. Yes. That was a Dodge two-door, license No. 70C633.

Q. Now, what did you do after you arrived back at the auto trailer court?

A. Officer Reid and I took the key from the defendant Gonzalez that would fit the auto trailer and we went over and we approached it. The lights were all out. I tried the doors to the car. They were locked. Officer Reid and I then entered the

(Testimony of A. V. Beckner.)

auto trailer with the key and we found the defendant Santana in bed in his underwear.

Q. You say you used the key to open the trailer?

A. Yes.

Q. And then what occurred inside the trailer?

A. Officer Reid asked Mr. Santana his name and where [16] he lived, and the defendant Santana replied his name was Santana and he lived in Mexicala. He asked him if he owned the car that was parked outside and he said "Yes." I believe I asked him for the key for the vehicle and he indicated up in some clothing that was hanging in the trailer.

Q. Were you asking these questions in Spanish?

A. No; in English?

Q. Mexican? A. No, English.

Q. Go ahead.

The Court: Did he answer you in English?

The Witness: Mostly in Spanish, but he would indicate—for example, I asked him for the key and he indicated his coat which was hanging in the trailer. I reached for the coat pocket and I removed this key that I have here.

Q. By Mr. Binns: Was this red metal tag on the key? A. Yes, it was.

Mr. Binns: May this car key with the red metal tag attached be marked as Government's next in order for identification?

The Court: It will be admitted in evidence.

(The key referred to was marked as Plain-

(Testimony of A. V. Beckner.)

tiff's Exhibit No. 6, and was received in evidence.)

Mrs. Root: It should be admitted in evidence as I [17] understand, exclusively as against Santana. I do not believe Mrs. Gonzalez was present at any of these conversations, therefore, it would be hearsay as to her. Our objection will go to that, it is hearsay as to the defendant Gonzalez.

The Court: I think that is true, counsel.

Mr. Binns: I will bring that out.

Q. After you went back to the auto court the second time where did Mrs. Gonzalez stay?

A. She remained in the vehicle with Officer Russell while the other officer and I went on out to the trailer.

Q. After you secured the key, Government's Exhibit 6, what occurred?

A. Officer Reid asked the defendant to put some clothes on, which he did—that is, he put on some trousers, I believe, and some shoes and we stepped outside to the vehicle. I used that key and I unlocked the door, opened the door, and I started looking inside of the vehicle, under the seats in the car, in the back and so forth and then I had occasion to go up under the dashboard with my hand, over the top of the glove compartment and I found something and I pulled it out and it was wrapped in a napkin. I opened it up and it was a copper can similar to what I have here.

Mr. Binns: May I have this large brown envelope marked for identification?

(Testimony of A. V. Beckner.)

The Clerk: Plaintiff's Exhibit 7, for identification. [18]

(The envelope referred to was marked as Plaintiff's Exhibit No. 7, for identification.)

Mr. Binns: Counsel has agreed to stipulate if the chemist were to take the stand he would testify that he sealed this large brown envelope in San Francisco.

Mrs. Root: So stipulated.

Mr. Mandel: So stipulated.

Mr. Binns: May the record show I am now breaking the seal on this large brown envelope.

Q. By Mr. Binns: Mr. Beckner, I show you an object wrapped in white paper which I have removed from Government's Exhibit No. 7 for identification, and ask you if you have ever seen that object before?

A. I have, yes. It bears my marking, the date and my initials.

Q. Where did you see that before?

A. That was found in the vehicle hidden underneath, on top of the glove compartment.

The Court: Which vehicle?

The Witness: Of the Dodge found at the auto trailer park.

Q. By Mr. Binns: Calling your attention to this piece of white napkin material, have you seen that before?

A. Yes. That is the napkin which it was wrapped in. It also bears our initials and the date. [19]

(Testimony of A. V. Beckner.)

Q. Calling your attention to the bottom of——

Mr. Binns: May I offer that can in evidence at this time, your Honor?

The Court: The can and napkins will be admitted in evidence.

(The articles referred to were marked as Plaintiff's Exhibit No. 7, and were received in evidence.)

Mr. Binns: And the large brown envelope in which it was wrapped—may that also be admitted as a part of the same exhibit?

The Court: It will be included as a part of Exhibit 7.

Q. By Mr. Binns: Calling your attention to the bottom of Government's Exhibit 7, were there any distinctive markings that you noticed on the bottom?

A. Yes. It bears a number. I do not recall it at the moment. It bears the number 60, which has been scratched there with some sharp instrument.

Q. Did you put that on there?

A. I did not.

Q. Was that on there when you got it?

A. It was.

Q. Calling your attention to Government's Exhibit 5, the 15 cans, do they bear any markings on the bottom? A. Yes, they do.

Q. Can you tell the jury what markings they bear? [20] I have this can here and it indicates No. 60 on the can and No. 59 also scratched in with a sharp instrument.

(Testimony of A. V. Beckner.)

Mr. Binns: May I pass to the jury Government's Exhibit No. 7?

The Court: Yes.

Mr. Binns: And I would like to pass the same can the jury previously saw and ask them to notice the bottom of the can.

The Court: Is that the type of container that is usually used for the transportation of opium or is it an unusual can?

The Witness: I have never seen any just exactly like it in that it is brass material. It is a little smaller in size and the diameter of it is a little smaller and the can is a little taller than most cans that are commonly used.

Q. By Mr. Binns: Can you tell us now what you observed on the bottom of the cans contained in Exhibit No. 5?

A. Yes. These two cans bear the number of 59 and 60. These two bear the numbers 59 and 60 and these two bear the number 59.

Q. And does that hold true for the rest of the cans? A. Yes, sir.

Q. They bear either the number 59 or 60?

A. Yes.

Q. Now then, after you had found the cans, which is [21] Government's Exhibit No. 7, what did you do?

A. Showed it to the defendant and asked him who it belonged to. He made no reply. He was then taken back into the auto trailer to complete his dressing. I continued in a search of the vehicle and

(Testimony of A. V. Beckner.)

I discovered that the back end of the car was locked, so I walked back into the trailer and Officer Reid asked the defendant where the other key was for the back of the car, and the defendant indicated up at his trousers.

The Court: I thought he had his trousers on at that time?

The Witness: Or one part of his clothing at any rate, which he did not have on, which was hanging there—his shirt and coat, and I believe another pair of trousers up there. At any rate, Officer Reid removed this from the watch pocket, I believe, of a pair of trousers and handed it to me and then I went back outside and continued searching the vehicle and nothing further—no further narcotics were found in the car.

Mr. Binns: May this second key be marked Government's exhibit next in order?

The Court: In evidence.

The Clerk: Government's Exhibit 8.

(The key referred to was marked as Plaintiff's Exhibit No. 8, and was received in evidence.) [22]

Q. By Mr. Binns: Now then, did you have any further conversations with the defendant Gonzalez after this incident where you had found the can of opium in Mr. Santana's automobile.

A. I asked her if she knew Santana and she said "Yes."

Q. Where did this conversation take place?

A. In the auto trailer. She was seated in an-

(Testimony of A. V. Beckner.)

other vehicle at that time with another officer. She stated that she had rented the auto trailer to Santana; that she had been down to her home in Imperial Valley that day and had just gotten back on that afternoon. That if there was any opium, why, she didn't know anything about it—it must belong to Santana. And that was about the extent of the conversation at that time as I recall it.

Q. All right. After that occasion did you have any other conversations with her?

A. Yes. She came to the State office building when she was released on bond and wanted some automobile tools out of the car.

Q. Can you tell us the date of this conversation you are now describing?

A. I made no note of it.

Q. You do not remember the date?

A. (No answer.)

Mr. Mandel: This conversation with Mrs. Gonzalez was [23] out of the presence of the defendant Santana.

Mr. Binns: I will ask him that question.

Q. This conversation you tell us about—how long was it after the arrest?

A. I would say a week.

Q. And where did the conversation take place?

A. In the State office, Room 102.

Q. And who was present besides yourself and Mrs. Gonzalez?

A. She appeared at that time with a lady that

(Testimony of A. V. Beckner.)

was her sister and I believe her daughter came with her on that occasion when she arrived there.

Q. Now then, can you tell us what the conversation was on that occasion?

The Court: That conversation will only be considered as evidence against the defendant Gonzalez. It will in no way be deemed as evidence against the defendant Santana.

Q. By Mr. Binns: Will you tell us what occurred in this conversation in your office?

A. She stated she wanted some tools out of the automobile and some clothing and I believe the trailer hitch, which she had taken off the car that she had had a wreck in, so I gave her the clothing and the trailer hitch and she wanted some tools out of the car and I took her down to the vehicle, opened the back end and she identified certain tools [24] as being hers. I told her at that time that inasmuch as the vehicle belonged to another man I was not going to let her take any of the tools until the thing was straightened out. She also wanted the keys for her home down at Westmoreland, which were contained on the key ring, and I told her I would have to hold those for the time being. I had one of the officers go out and make a set of duplicate keys for her so that she could get into her trailer and also her home down in Westmoreland. She stated, "You know that that opium is not mine," and I said, "No, Mrs. Gonzalez, I don't know that to be a fact." I said, "The opium was in the car, it was in your bag, and that is all I can say about it." She says,

(Testimony of A. V. Beckner.)

"Well," she says, "it did not belong to me." She stated that she had put some tools in that car after the wrecking of her own car and that she had taken the bag and the tools and had put them into the Plymouth car on that day of the arrest.

Q. Pardon me. I think you said she had taken some tools and put them in the car. Is that what you meant to say?

A. That is what she said she had done. In other words, she thought that there were tools in that bag when she carried it out of the trailer and put it into the Plymouth.

Q. You cannot testify as to what she thought. You can only testify as to what she told you.

A. That is what she said—she was telling me this.

Q. All right. You got me confused. Can you go back [25] and tell me again what she told you on this occasion?

A. She said that the opium did not belong to her; that it was—that if it was in her bag she did not know how it got there; that she thought that there were tools, automobile tools in that bag when she took it and put it in the Plymouth car, and I pointed out the fact that the bag did not show any evidence of any dirt or any grease in the bag and I asked her why, then, if she was going up to visit her daughter would she be carrying a bag full of tools up to visit her daughter. And she said, "Well, I know it sounds funny, but that is all I can say. The opium does not belong to me."

(Testimony of A. V. Beckner.)

She returned at a later date wanting something else out of the car and——

Q. How long later was that later date?

A. Oh, it was a jack she wanted. That was several weeks after the first time—conversation.

Q. Where did she come to?

A. At the State office.

Q. Who was present besides yourself and her?

A. The office force was there. I do not recall just who was in there. I believe she came in alone on that occasion.

Q. And what was the conversation on that occasion?

A. She wanted the automobile jack, which I gave her.

Mr. Mandel: Same objection with reference to the [26] second conversation.

The Court: There is nothing incriminating about that.

Q. By Mr. Binns: Where was the jack?

A. In the Plymouth car she was driving on the night of her arrest.

Q. Was that the extent of the conversation on the third occasion?

A. She went over the same conversation stating, “You know this stuff did not belong to me” and all that sort of thing, and I told her I didn’t know any such thing to be a fact. That was about the extent of the conversation then.

The Court: Those conversations will be limited to the defendant Gonzalez and the jury is instructed

(Testimony of A. V. Beckner.)

to not consider them as any evidence against the defendant Santana.

We will take our morning recess at this time. Ladies and gentlemen, we are going to take a recess for a few moments and the court desires to admonish you not to discuss this case among yourselves or permit any person to discuss it with you, or to express or form any opinion until the case is finally submitted to you. During your term as jurors, you will hear that admonition given to you many times and you may think it is a mere formality, but it is not. The court wants you to bear in mind that the court is interested in having your minds free and open and uncontaminated by outside influences. Will counsel stipulate that [27] that admonition is sufficient and need not be repeated at each recess?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: Yes.

(Short recess.)

The Court: Will you stipulate the jurors are present in the jury box and the defendants are in court with their counsel?

Mr. Mandel: So stipulated.

Mrs. Root: Yes, so stipulated.

The Court: You may proceed.

Mr. Binns: I have an automobile registration card which I would like to have marked for identification.

(The document referred to was marked as Plaintiff's Exhibit No. 9, for identification.)

(Testimony of A. V. Beckner.)

Mr. Binns: And may the pink slip be marked as a part of the same exhibit, your Honor?

The Court: Yes.

Mr. Binns: I am going to ask that it be stipulated photostatic copies may be substituted for this and the Government's first exhibit at the conclusion of this case.

Mrs. Root: There is no objection to that.

Mr. Mandel: We have no objection.

Q. By Mr. Binns: I show you these two certificates, [28] Government's Exhibit 9 for identification, and ask you if you have seen them before?

A. Yes, I have.

Q. Where did you see them?

A. In the side coat pocket of the coat belonging to the defendant Santana.

Q. Will you please observe the license number that is given there? What is it?

A. 70 C 633 for a Dodge Six, two-door sedan.

Q. Was that the license number that was on the Dodge that was parked outside? A. It is.

The Court: It will be admitted as Government's Exhibit 9.

(The document referred to was marked as Plaintiff's Exhibit No. 9, and was received in evidence.)

Mr. Binns: Your Honor, I have no further questions of this witness. However, I have this problem—Police Officer Reid is under subpoena to appear in another case at two o'clock. I wonder if I could have the favor of putting him on now out of

(Testimony of A. V. Beckner.)

order? I am only going to ask him a question or two.

Mrs. Root: As far as we are concerned, we have no objection.

Mr. Binns: And dispose of him before we cross examine [29] Mr. Beckner.

Mr. Mandel: Let me ask you this, Mr. Reid will be available for cross examination?

Mr. Binns: I think his testimony will be short enough so he can be disposed of.

Mr. Mandel: We have no objection.

Mr. Binns: Officer Reid, will you be sworn?

WILLIAM T. REID,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: William T. Reid.

Direct Examination

By Mr. Binns:

Q. Where do you live?

A. Los Angeles, California.

Q. How long have you lived there?

A. 25 years.

Q. Where are you employed?

(Testimony of William T. Reid.)

A. Police officer, attached to the Narcotic Detail, Central Detective Bureau.

Q. How long have you been so employed?

A. 11 years the first day of May, 1946.

Q. Are you the officer that was with Officer Beckner [30] on the occasion about which he has testified here?

A. I am.

Q. Calling your attention to the time when you went back and went into the trailer and found the defendant Santana—

A. Yes.

Q. Can you testify as to what occurred inside that trailer?

A. Inspector Beckner inserted the key in the outside door of this trailer, unlocked the door. I opened the inside screen door and entered the trailer. At this time Mr. Santana, who was lying on a bunk in the front end of the trailer, threw the bedclothes off and threw his feet on the floor and sat up on the side of the bed.

Q. Was there any conversation had?

A. I asked Mr. Santana—

Mrs. Root: Of course this is hearsay as to the defendant Gonzalez. I guess we understand that.

The Court: Yes, it will be limited to the defendant Santana and is not binding in any way upon the defendant Gonzalez.

Mrs. Root: Thank you.

The Witness: I asked the defendant what his name was. He said "Santana." I asked him if he owned the car that was parked outside of the trailer and he stated that he did. [31] I said, "Put your

(Testimony of William T. Reid.)

clothes on" and he put on a shirt and then I asked him where the keys to the car was and he pointed up to a coat that was hanging on a hangar in the center of the trailer. Inspector Beckner reached into the coat pocket and took a key from the pocket and showed him the key and asked him if that was the key and he said it was.

Q. I might ask you now, were you speaking in Spanish? A. I was not.

Q. Was Inspector Beckner speaking in Spanish?

A. No, sir.

Q. All right, continue.

A. And Inspector Beckner left the trailer. I told the defendant, I said, "Come outside." I took him outside and stood him alongside of the right door of this Dodge car while Inspector Beckner opened the door and entered the car and looked around the back end of the car, the back, rear seat—looked in the glove compartment and then started a search under the dashboard of the car. Inspector Beckner came out from under the dashboard with something in his hand wrapped in a white napkin. He unwrapped it and showed it to the defendant and says, "What is this?" The defendant did not make any statement. I then took the defendant into the trailer, and as he entered the trailer he started a lot of rapid Spanish conversation with me, which I did not understand. After taking him into the trailer I told him to [32] complete dressing and asked him how long he had that car. He stated that he had bought it one week previous, in

(Testimony of William T. Reid.)

Spanish. He answered me in Spanish, saying, "una semana pasada" and I asked him where he had bought the car and he answered in San Francisco. I asked him how long he had been staying in the trailer and I believe he stated two nights.

Q. Did he state that in Spanish or English?

A. In Spanish. He had completed dressing at that time and I made a search of the trailer for further narcotics and did not find them.

Mrs. Root: Will you read the question?

(Question read.)

Q. By Mr. Binns: Do you remember anything concerning a second key?

A. Yes. Inspector Beckner came back into the trailer, came to the door of the trailer and said that the turtleback of the car was locked and asked the defendant—I says, "Where is the key for the back?" And he pointed to a pair of pants and I was looking in the side pocket and he said, "No" and pointed to the watch pocket of the pants and I reached into the watch pocket of the pants and removed a key which I handed to Inspector Beckner.

Mr. Binns: That is all. You may cross examine.

Cross Examination

By Mr. Mandel:

Q. Officer Reid, what time of day or night was it that you came to this trailer where you found Mr. Santana?

A. It was about midnight or very shortly after midnight on the 10th.

(Testimony of William T. Reid.)

Q. And where were you just before you came there?

A. We had driven Mrs. Gonzalez from La Canada to the trailer court at 2634 Garvey Road. I believe that is the number.

Q. Up until the time that you drove up to Mr. Santana's place you had never met the gentleman before, had you?

A. No, sir.

Q. Never knew who he was, did you?

A. Had heard about him, that is all.

Q. From Mrs. Gonzalez?

A. And prior to that.

Q. You had seen him?

A. I had not seen him.

Q. Did you ever see him before you saw him on the night of the 10th or the 9th of September, or October, rather?

A. I did not.

Q. And was anyone there other than the defendant at [34] that time, the defendant Santana?

A. He was alone in the trailer.

Q. And he was asleep at the time, I take it?

A. Evidently.

Q. Well, I mean you saw him asleep when you came there?

A. He was lying in bed.

Q. And he was in his underwear, was he?

A. Yes, sir.

Q. Winter underwear, was it not?

A. Yes, sir.

Q. And you knocked on the door or you came in? How did that occur?

A. Inspector Beckner opened the outside door

(Testimony of William T. Reid.)

and I reached through a little hole in the screen door and unhooked it and walked in the trailer.

Q. You did not tell him who you were at the time? A. "Police officers."

Q. He did not make any objection to your coming in, did he? A. He did not.

Q. And then he did not speak in English? He did not speak good English, did he?

A. He never uttered a word in English outside of "San Francisco."

Q. You say he never uttered a word in English?

A. Only "San Francisco."

Q. You testified at some prior hearing, did you not? A. I did.

Q. I show you a copy of a preliminary examination——

Mr. Mandel: Counsel, this is a copy of the preliminary examination given in the State court, Division No. 3, before Honorable Joseph Chambers on the 23rd of October, 1945.

Mr. Binns: All right.

Q. By Mr. Mandel: At that time did he speak in—you say he did not speak in English at all?

A. Outside of the words——

Q. I mean in——

Yes, in English. A. No.

Q. He did not speak in English at all?

A. "San Francisco" and "Yes" and "No", but no other conversation.

Q. I show you your testimony on page 19 of the

(Testimony of William T. Reid.)

transcript, lines 8 to 14, inclusive. Will you please read that to yourself.

The Witness: That is right, that is correct.

Mr. Mandel: May I read this, your Honor?

The Court: Did you so testify at that time?

The Witness: I did.

Mr. Mandel: May I read it? [36]

Mr. Binns: You may read it now.

Mr. Mandel: The witness Reid was on the stand and the testimony was:

“I asked the defendant where he had obtained this car and he stated that he had got it in San Francisco. This conversation was in broken English—English and broken Spanish. After looking at the defendant’s passport papers, I asked him how long he had been in this country and he stated, I believe, “Three or four weeks’.”

Q. Then the defendant did speak to you partially in English and partially in Spanish, is that correct?

A. Outside of “Yes” and “No” he spoke in Spanish.

Q. When you talked to him and you asked him about the possession of this can of opium that you discovered in the glove compartment of the car, I believe your testimony was he said that he would not answer that question as to the ownership of that can?

A. He did not answer the question until I started taking him back into the trailer, when he

(Testimony of William T. Reid.)

just started talking Spanish very rapidly, which I do not understand a word of.

Q. You don't know whether he was denying the ownership of the car, do you, Officer?

A. That was after we asked him——

Q. You don't understand Spanish, do you, Officer? [37]

A. I don't understand that.

The Court: That is argumentative.

Q. By Mr. Mandel: You don't understand Spanish? A. A little.

Q. You know "Una semana pasada" means one week ago. Is that the extent of your Spanish?

A. A little bit more.

Q. Did you understand the defendant?

A. I did.

Q. Everything that he said?

A. Not everything.

Q. And, as a matter of fact, he began speaking so rapidly that you could not understand, isn't that true?

A. At that time when he left the car to enter the trailer I did not understand a word he said.

Q. When Mrs. Gonzalez was brought over to the trailer this man started talking in Spanish, did he not? A. I told him to keep quiet.

Q. Do you know what he was telling—what he was saying at that time when he was addressing his remarks to Mrs. Gonzalez?

A. He started speaking to Mrs. Gonzalez and I refused to let him speak to her.

(Testimony of William T. Reid.)

Q. But you don't know what he said, do you?

A. He only said about two words. [38]

Q. That is all he said? A. That is all.

Q. Now then, you didn't—you searched this man's premises—I mean where he was staying, very thoroughly, did you not? A. I did.

Q. You did not find anything but this particular can in the glove compartment, isn't that correct?

A. In the Dodge car the can was found.

Q. I am speaking of the Dodge car that was right by the trailer. Isn't that true?

A. Yes, sir.

Q. You did not find anything else, however?

A. No, sir.

Q. And you and your brother officer searched very thoroughly and exhaustively, did you not?

A. We did.

Q. Is that correct? A. That is correct.

Q. And you searched the defendant's own person and also the room in the trailer, did you not?

A. I did.

Q. You did not find anything there?

A. I did not.

Q. All right. He answered very candidly and frankly [39] your questions as best he could as to the cars, did he not?

A. (No answer.)

Mr. Binns: That calls for a conclusion.

The Witness: Yes.

Q. By Mr. Mandel: He did say the Dodge car

(Testimony of William T. Reid.)

belonged to him and explained how long he had it, did he not? A. He said about a week.

Q. Did he say from whom he purchased the car?

A. San Francisco, that is all.

Q. Did he say the person from whom he purchased it? A. He did not.

Q. You saw the pink certificate, didn't you, at that time? You had it in your possession?

A. I did.

Q. And you knew from the pink certificate that it had the name Jose Gonzalez, did you not?

A. That is correct.

Q. Then you asked him, did you not, how he came into possession of the car and how he purchased it, did you not? A. I did.

Q. And then he told you that he had purchased it in San Francisco from Jose Gonzalez, didn't he?

A. He stated he purchased it in San Francisco.

Q. From Jose Gonzalez, is that true?

A. I did not ask him that question. [40]

Q. And didn't he say the Jose Gonzalez was the brother-in-law of Mrs. Gonzalez?

A. He did not.

Q. Did the defendant say with reference to the Plymouth car that that Plymouth car was his car and that it was supposed to have gone into Mexico to his wife? A. Not to me, he did not.

Q. Did not say that? A. No.

Q. And didn't he say while he was up in San Francisco or did you question him about it, that while he was in San Francisco that Mrs. Gonzalez

(Testimony of William T. Reid.)

met with an accident in the car and was at the New-hall Hospital and that they asked for his car, the Plymouth car which was in Los Angeles, when they went up to San Francisco, and that they could use it during the time that the car was not being used that had been wrecked? Was there any conversation along that line? A. No, sir.

Q. You did not ask him anything about that at all, did you? A. I did not.

Q. And did the defendant tell you that this Plymouth car had been brought back from Mexico by Mrs. Gonzales without his knowledge?

A. Not to me. [41]

Q. To whom in your presence? To someone else?

A. Not in my presence, no.

Q. When you said "Not to me" do you mean you never heard of the conversation?

The Court: Counsel, that language is perfectly understandable.

Q. By Mr. Mandel: You never heard that conversation? A. I did not.

Q. Very well. Have you told us all the conversations at all times you had with the defendant Santana?

A. That is all I recall at this time.

Q. You never questioned him again?

A. I did not.

Q. You never questioned him in Spanish, of course, not speaking the Spanish language?

A. I never questioned him again after that evening.

(Testimony of William T. Reid.)

Q. And do you know anybody by the name of Luis Gonzalez? A. I do not.

Q. Do you know anybody by the name of Sanford now in the County Jail? A. I do not.

Q. I will give you the full name—Francis Julio Sanford. Did you ever hear of that person before?

A. I might have handled the boy three or four years [42] ago. I don't recall the name.

Q. Have you handled such a boy recently?

Mr. Binns: Would it help you if you saw his name written?

Mr. Mandel: I have a subpoena for him to be here.

(Handing paper to the witness.)

The Witness: No. Yes, I do know a Mexican boy by the name of Sanford who I handled. He lived with his mother. That was three or four years ago. I don't know if he is the same one or not. I wouldn't know unless I saw him.

Q. By Mr. Mandel: You had nothing to do with the arrest of this boy, did you?

A. Not the case that he is in the County Jail for now, no, sir.

Q. During the time that you were talking with Santana there was never a Spanish interpreter present, was there? A. There was not.

Q. You never had any further conversation with the defendant Santana?

The Court: That question has been asked and answered.

Mr. Mandel: That is all.

(Testimony of William T. Reid.)

Q. By Mrs. Root: Mr. Reid, did you note the contents of clothing in the trailer, whether they appeared to be women's clothing—the place where Mr. Santana was located?

A. Women and men's clothing. [43]

Q. And at the time you saw Mr. Beckner take the key to the Dodge car, you are referring to the Dodge car which was parked immediately outside of the trailer? A. Yes.

Q. And the key was taken from Mr. Santana's trousers or coat pocket?

A. One from the coat pocket and one from the trousers pocket.

Q. Of Mr. Santana?

A. I don't know. They probably was his clothes.

Q. Well, in other words, he indicated when he was asked for the key "up there"? A. Yes.

Q. And also as to the pink slip for the Dodge car that was parked immediately outside of the trailer, that was found in the coat pocket of Mr. Santana? A. Inside coat pocket.

Q. Found in his inside coat pocket?

A. Yes.

Q. And there was conversation relative to that pink slip and you showed it to him at the time of the conversation? A. I did.

Q. And it was then that there was an indication from Mr. Santana that he had purchased that Dodge automobile a week ago? [44] A. Yes.

Q. And the Dodge automobile is the automobile

(Testimony of William T. Reid.)

where you saw Mr. Beckner take the one can of opium, wrapped in the linen napkin or the napkin, from underneath the dashboard of the car?

A. Yes.

Mrs. Root: That is all.

Mr. Mandel: Just a few questions with the permission of the court.

The Court: Proceed.

Q. By Mr. Mandel: This trailer, the car, rather, was locked, was it not? A. Yes.

Q. And you asked Mr. Santana if he had locked the car, is that correct?

A. I believe someone else asked him that question.

Q. What was the answer that he gave?

A. I was not present at the time.

Q. You were not present when the answer was given? A. Yes.

Q. Mr. Beckner spoke to him, did he not?

A. (No answer.)

Q. And you did not hear all the conversation that was had in the presence of Mr. Beckner?

A. I did. The defendant was in my custody at all [45] times.

Q. Well, then, at that time didn't he say he had not locked the automobile?

A. (No answer.)

Q. How is that?

A. The car was locked up tight when we took the key from him to open it.

(Testimony of William T. Reid.)

Q. You asked the defendant if he had locked it, did you not? A. I did not.

Q. How is that? A. I did not.

Q. Well, did any officer in your presence ask him that question?

A. Not in my presence.

Q. Did you ask the defendant how he happened to be in the trailer?

A. I believe he stated that he had been there for two nights.

Q. Well, did you ask him how he happened to be there? A. No, I did not.

Q. How is that?

A. No, not that I recall. I might have asked him what he was doing in the trailer or if he had permission to be in the trailer. I don't recall his answer at this time. [46]

Q. What is that now?

A. I don't recall his answer at this time.

Q. You don't recall what his answer was?

A. (No answer.)

Q. Did you ask the defendant as to whether or not he had been there at the request of Mr. Gonzalez, the husband of Mrs. Gonzalez?

A. I did not.

Q. Did he say anything about that?

A. He did not to me.

Mr. Mandel: That is all.

Mr. Binns: No further questions.

May Officer Reid be excused?

Mrs. Root: As far as we are concerned.

(Testimony of William T. Reid.)

Mr. Mandel: Yes. I have been looking over the preliminary transcript. There is one question I was interested in but I haven't found it yet. Are you going to be busy this afternoon?

The Witness: Yes, I have a trial in the state court.

Mr. Mandel: If that matter is not found he will be excused.

The Court: We are not going to hold him here, but he will be available if he is needed.

Mr. Binns: Mr. Beckner, will you take the stand again? [47]

A. V. BECKNER,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, was recalled and testified further as follows:

Cross Examination

By Mrs. Root:

Q. Mr. Beckner, you arrived at this trailer some time around 7:30 of the evening of October 10th or 11th, which was it?

A. On the evening of October 9th at about—it was before seven p.m.

Q. You had not been there during the afternoon?

A. On one occasion I was there.

Q. And about the hour, please, that you were there? A. About three o'clock.

Q. But not earlier than three?

(Testimony of A. V. Beckner.)

A. I believe not.

Q. Now, to your knowledge none of the other officers were there before you were there at three?

A. I couldn't answer that.

Q. Now, at the time that you arrived at the trailer at three, did you see any persons about the trailer?

A. No; it was locked.

Q. And no cars parked nearby?

A. No cars. [48]

Q. Did you note a cleaning establishment somewhere close to the trailer?

A. Do I know of one?

Q. Did you notice one?

A. I didn't pay any particular attention.

Q. And when you arrived at about the hour of seven did you see any cars parked at or about the trailer?

A. There were no cars.

Q. And were the lights on or off in the trailer?

A. The lights were on.

Q. On? A. Yes.

Q. And during the daytime, at three o'clock when you were there, you could not tell whether or not there was anyone on the inside of the trailer?

A. I couldn't tell that.

Q. Now, when you ultimately saw Mrs. Gonzalez that was about what hour?

A. About 7:30 p.m.

Q. And when she drove in did she drive in close to the trailer?

A. Yes.

Q. And what did she do immediately upon parking the car?

(Testimony of A. V. Beckner.)

A. Got out of the car and entered the trailer.

Q. And were the lights of her car off at the time she left it?

A. She switched them off, yes.

Q. Now, when I say "her car" I mean the car that was registered to Santana, but the one she was in possession of at the time.

A. Yes.

Q. Now, when she went into the trailer about how long did she stay?

A. She remained in the trailer.

Q. For how long?

A. Until about 9:00 p.m.

Q. And all of the time the lights were on?

A. They were.

Q. And you could see what she was doing in the trailer, could you not?

A. I looked in twice.

Q. And during the times that you looked in what was she doing?

A. One time she was moving about in the center of the trailer, I believe at the closet, and the other time she was lying down on a bed reading a magazine, I believe it was.

Q. And upon her departure from the trailer how far were you from her?

A. I would say around 100 feet—possibly over 100 [50] feet.

Q. Were you in your car at the time?

A. I was afoot at that particular time.

Q. And when she walked out of the trailer she

(Testimony of A. V. Beckner.)

got into the car that was then registered to Santana, is that correct? A. She did.

Q. And drove off? A. Yes.

Q. And did you see any movement made by herself in the car other than to merely start the motor and turn on the lights and move?

A. Merely to start the car and leave.

Q. Now, at the time that you apprehended Mrs. Gonzalez did you have a conversation with her relative to the time that she had obtained the key that matched the suitcase? In other words, was there any conversation as to whether or not she had obtained the key from the trailer as of that date?

A. No, no.

Q. Did she say anything about the key that opened the suitcase at all to you?

A. No, only that it was on her key ring where I found it, of course.

Q. But you did not ask her whether or not she had [51] taken the key ring from the trailer as of that day or not?

A. No. I did ask her to show me each one of the keys and what it belonged to and she enumerated each key, one for home home in Westmoreland and one for the padlock on the gate at her home at Westmoreland and one key for the auto trailer, two keys for suitcases, other suitcases. She enumerated each key to show me what they were for.

Q. And she took the key ring containing the keys that you have enumerated from her purse?

A. She did.

(Testimony of A. V. Beckner.)

Q. And she had two purses at the time, did she not?

A. She later made that statement. Frankly, it is my honest opinion she had one purse.

Q. Well, do you recall definitely by observation as to whether she had one purse or two purses or how many purses she did have?

A. It is my opinion she had one purse with her.

Q. But you did not take any particular notice at the time? A. I did not.

Q. And as to the conversation with Mrs. Gonzalez, you asked her if she had a key to the suitcase, is that correct? A. Yes. [52]

Q. Now, you had merely looked at the suitcase previous to that, isn't that correct? A. I had.

Q. You had not tried the lock, had you?

A. I had tried the lock, yes.

Q. And where was she when you tried the lock?

A. At that time she was seated in the front part of the vehicle.

Q. And where were you?

A. I was on the ground on the driver's side.

Q. There was no play as between you or she relative to any conversation about the fact that the suitcase was locked or she was looking over that way or anything of that sort?

A. I think I remarked, "It is locked; do you have the key for it?"

Q. And what did she say?

A. She started looking in her purse and selected this bunch of keys.

(Testimony of A. V. Beckner.)

Q. And immediately upon your finding the contents of the suitcase and the cans, was when she said, "Well, I know nothing of the contents; I thought it was tools in the suitcase"?

A. No, not at that time. There was no mention of any tools.

Q. When did she make that statement? [53]

A. When she came to the State office after she was released on bond. That was the first indication that I had about the suitcase containing tools previously.

Q. But what did she say immediately upon your discovering the cans in the suitcase?

A. I said, "It is opium. Who does this belong to? What do you know about it?" "If that is opium," she said, "I never saw it before. I don't know anything about how it got in my suitcase," and that was about the extent of her answer.

Q. Now, did she tell you as to when she obtained the suitcase and had placed it into the car that she was driving of Santana's?

A. She said that she had removed the suitcase from the auto trailer just a few moments prior to her departure. I told her, I said, "That is not true because we had the car and trailer under observation since she arrived there," and that she did not take the suitcase from the trailer while we were present.

Q. Now, Mr. Beckner——

The Court: What was her answer to that?

The Witness: There was no reply.

(Testimony of A. V. Beckner.)

Q. By Mrs. Root: Mr. Beckner, at the time that she said, "her departure", had she told you up to that time that she had departed from the trailer at about the hour of 2:30 [54] in the afternoon and then returned at 7:30 that evening?

A. She has since made that statement on January 22nd. She did make the statement that you have related, but not on the evening of her arrest.

Q. In other words, on the evening of her arrest she said she took the suitcase at the time of her departure? A. That is right.

Q. Whereupon you said that was impossible because you had had the car and trailer under observation from three o'clock that afternoon on?

A. I did.

Q. And she stood mute?

A. That is right.

Q. That is right; but on the 22nd of January she told you that she had been there at about the hour of 2:30 and had taken the suitcase at that time? A. That was the story she told.

Q. She also told you that it was the tools that she believed, on January 22nd, in this conversation, that were in the suitcase, is that correct?

A. Well, she had related that previously, on her first visit to the office when she wanted her clothing and material that was in the car, about the tools being in the car.

Q. And throughout the entire conversations that you had with Mrs. Gonzalez they all amounted to

(Testimony of A. V. Beckner.)

the fact that [55] she did not know the suitcase contained cans of opium?

A. That is what she said.

Q. Now, Mr. Beckner, when you took from the pocket of Mr. Santana's coat after he had said that the pink slip or the white slip was in the pocket, or a conversation to that effect, did you notice on the pink slip or white slip any date or transfer of that automobile?

A. I did not particularly notice, no.

Q. I believe that you have it in front of you. Would you mind looking at it?

A. No, I don't have it.

The Court: It will speak for itself, counsel.

Mrs. Root: It is preliminary. I am going to ask a question.

Q. Mr. Beckner, at the time that you took it out of the coat pocket of Mr. Santana, did you look at it for the date of transfer?

A. Not particularly.

Q. Well, did you have any conversation with Mr. Santana about the date of the transfer of that car at the time you were holding it in your hand, when you had taken it from his pocket?

A. No, there was no mention about the certificate having been transferred at that time.

Q. In other words, there wasn't any conversation as [56] to how long he had had the car?

A. Yes.

Q. What was that conversation?

(Testimony of A. V. Beckner.)

A. Well, I overheard some of that conversation and I believe I was told that it was a week.

Q. In other words, as to whether or not that was his answer at that time you are not just clear, is that right?

A. I am not positive, no.

Q. Now, as to the can of opium that was found in the Dodge car, the keys for which you obtained from Mr. Santana's pocket, from your experience in dealing with narcotics can you tell me as to whether or not it is like and kind to the 16 cans found in the suitcase?

A. Well, it looks very similar.

A. And it bore the number 60, if I am correct?

A. Yes, it did.

Q. And some of the other cans, of the 16 cans found in the suitcase, bore the number of 60 as well?

A. That is right.

Q. And the type of numbering on the cans, either of the 60 or 59, were they similar in type and kind?

A. They appeared to be, yes.

Mrs. Root: That is all, thank you, Mr. Beckner.

Q. By Mr. Mandel: Officer Beckner, from your narrative I take it that Mrs. Gonzalez was the first person that was [57] arrested in this particular case?

A. She was.

Q. And you were accompanied by Officer Reid and some other officer?

A. Russell.

Q. And you had this—you say you had this automobile under observation and surveillance for some time?

A. Yes.

(Testimony of A. V. Beckner.)

Q. Before the arrest was made? A. Yes.

Q. In the conversation that you had with Mrs. Gonzalez did you ascertain whether or not she had just come from some other jurisdiction or was that related to you?

A. She stated that she had arrived that day from Imperial Valley.

Q. Was there anything said about Santana being on the trip with her from the Imperial Valley?

A. No.

Q. Did she say she had gone with the car to Mexico? A. No; not that I remember.

Q. No conversation about that? Did she say Mr. Santana directed her to go to Mexico or come back or anything of that sort?

A. Well, at a conversation on January 22nd Mrs. Gonzalez stated that—— [58]

Q. Wait a minute. This conversation was not in the presence of this defendant?

A. You are right. That is correct.

The Court: You are asking him about conversations.

Mr. Mandel: Yes, I am. It is really my fault, but I meant at the particular conversation when you first apprehended her was there any conversation about that? A. Not about that, no.

Q. Now, how long did you have this car under observation, did you say?

A. Since the 8th, which was Monday. Some time in the morning on October 8th and intermittently until the arrest of Mrs. Gonzalez.

(Testimony of A. V. Beckner.)

Q. During this time did you ever see Mr. Santana around there?

A. I had not seen him personally, no.

Q. Now then, later upon information that was furnished you by Mrs. Gonzalez you came to this trailer in Alhambra?

A. Yes.

Q. And accompanied by Officer Russell, was it?

A. Russell and Reid.

Q. And then you came into the trailer at that time. It was dark? I mean, there were no lights on?

A. No lights on when we arrived.

Q. And you announced yourselves as officers and [59] knocked on the trailer, I presume?

A. Said, "Police officers."

Q. You do not speak Spanish, do you, Officer?

A. Very little.

Q. And when you announced yourselves as police officers the defendant was in bed?

A. Well, when I saw him he was. He was in a sitting position, I believe, with his feet on the floor.

Q. You came in after Reid had been there?

A. Yes, that is right.

Q. You went to the car while Mr. Reid went into the trailer?

A. No. We entered the trailer and went to the car later. I went to the car first before going in the trailer and then we both entered together.

Q. Now then, did Mr. Reid converse with the defendant or was it both of you or one?

A. Reid did most of the talking to the defendant.

(Testimony of A. V. Beckner.)

Q. And you were not present during the entire conversation, I take it? A. No.

Q. You went out one time to open the car?

A. Well, we were all three together when I went out to open the car originally.

Q. You could not understand all that the defendant [60] was saying, could you?

A. Not all that he was saying, no.

Q. He seemed to be speaking in broken English and Spanish?

A. Yes. That appeared to be so.

Q. I mean broken English? A. Yes.

Q. And a great deal of the conversation was interspersed with Latin expressions, is that correct?

A. Yes, I believe there was.

Q. And you could not say definitely and with any certainty you understood what he was saying, all that he said? A. No, I couldn't.

Q. But he did make it clear, did he not, to you that he was not the owner of that opium or knew anything about it, isn't that true?

A. No, he didn't make it clear to me. It isn't clear yet.

Q. He didn't? A. No.

Q. He has not made it clear to this time?

A. No, he hasn't.

Q. Well, you don't understand what he said?

A. No, I don't.

Q. Well, he was speaking in rapid Spanish, wasn't he, [61] to you when you asked him about these things?

(Testimony of A. V. Beckner.)

A. Yes, he would reply in Spanish.

Q. During all this time that you had him under questioning and were going around you were searching the place as Officer Reid testified, isn't that right?

A. Yes, I was out in the car part of the time, in it and in the back end of the car looking it over.

Q. There was never any reluctance on this man's part to permit you to search?

A. We didn't consult him about searching the place.

Q. Well, you asked for his keys to the compartment of the car and you asked for the passport and asked him to take the keys from the pants and he gave them to you?

A. Yes; he indicated where they could be found.

Q. There was never any hesitancy upon the part of the defendant to give you anything you might have asked for, if he understood it?

A. There didn't appear to be, no.

Q. Did you explain to him what part of the car the opium was found in?

A. He was there and saw me find it.

Q. And this car was locked before that time?

A. Both doors were locked.

Q. Do you know whether a question was directed to the defendant as to whether or not he had locked the car? [62]

A. It is my information that the question was addressed to him by another officer at a later date.

Testimony of A. V. Beckner.)

Q. Well, you don't know that?

A. I don't know it—I did hear it in a court of law, however.

Q. Do you know a man by the name of Luis Gonzalez?

A. I have since learned of a man by that name.

Q. Was he related to one of the parties involved in this case?

A. I believe it is some relation to Mrs. Gonzalez.

Q. Do you know whether or not such a person used this car, this Dodge car during part of this time? A. I don't know that.

Q. You don't know that? Do you know whether he used it on the 8th or 9th or 7th of October of this year? A. I don't know that.

Q. Of last year, I mean to say?

A. No, I don't know that.

Q. Where did you find out about Luis Gonzalez?

A. When Mrs. Gonzalez told me about him. I forget her exact conversation but he is some relation to her.

Q. Was it mentioned that he was with her or saw her that day or prior to that time?

A. I forget why she brought his name up, but he did mention Luis Gonzalez. [63]

Q. That is a brother?

A. Not in connection with this transaction, however.

Q. Nothing was mentioned about this transaction? A. No.

(Testimony of A. V. Beckner.)

Q. Do you know a man by the name of Francisco Julio Sanford? A. Yes, sir.

Q. Do you know whether or not any mention of Luis Gonzalez was mentioned in connection with this man's arrest?

A. Yes, he mentioned it to me.

Q. He did mention it? A. Yes.

Q. Didn't he mention that there was—that this man was an opium—was in the opium business, this man?

A. This man Sanford told me a very peculiar tale.

Mrs. Root: Just a moment, counsel. I am going to object on the ground that is hearsay, certainly as to the defendant Gonzalez.

The Court: It is incompetent, irrelevant and immaterial as far as this case is concerned. We are not trying somebody who is over in the county jail; we are trying the two defendants who are in court.

Mr. Mandel: It is a preliminary question. May we approach the bench?

The Court: No, I don't think there is any necessity to [64] approach the bench.

Q. By Mr. Mandel: Do you know the man?

A. I met him for the first time while this case was pending, yes.

Q. And you do know Luis Gonzalez?

A. No, I don't know Luis Gonzalez.

Q. I believe you stated that the opium—I do not wish to reiterate, if your Honor please, but I want to get it clear in my own mind and the jury's mind,

(Testimony of A. V. Beckner.)

this opium, this one can of opium that was found in the Dodge car near the trailer where Mr. Santana was sleeping, was found, according to your testimony, in the glove compartment.

A. On top of the glove compartment, under the dashboard of the vehicle.

Mr. Mandel: That is all.

Mrs. Root: If your Honor, please, I have a couple of further questions.

Q. Mr. Beckner, the suitcase containing the cans of opium that were found in the car, will you tell me where it was found in the car, please?

A. Where the suitcase was?

Q. That is right.

A. It was on the floor in the rear compartment of the vehicle. It is a four-door sedan.

Q. In other words, not in the turtleback? [65]

A. No.

Q. But where the back seat is?

A. That is right.

Q. Did you find some dirty clothes, women's wearing apparel in the back seat, too?

A. There was a pillowcase full of dresses and under clothing and so forth belonging to women.

Q. And also did you search the contents of the dirty clothes for narcotics? A. I did.

Q. And you did not find any, did you?

A. I did not.

Q. And did you search the purse of Mrs. Gonzalez? A. I did.

Q. And you did not find any narcotics there?

(Testimony of A. V. Beckner.)

A. I did not.

Q. In other words, the narcotics that you found in the car that was registered to Mr. Santana, but in the possession of Mrs. Gonzalez, were all contained in this suitcase? A. That is right.

Mrs. Root: Thank you very much and that is all.

Mr. Binns: No questions, your Honor.

(Witness excused.)

The Court: It is now 12:00 o'clock and at this time we will take our noon recess until 1:30. The jury will bear [66] in mind the admonition the court has heretofore given you.

(Whereupon, at 12:00 o'clock noon, a recess was had until 1:30 o'clock p.m. of the same day.) [67]

Los Angeles, California

Wednesday, February, 20, 1946, 1:30 p.m.

The Court: Will you stipulate the jurors are present in the jury box and the defendants are in court with their counsel?

Mr. Mandel: So stipulated, your Honor.

Mrs. Root: So stipulated.

Mr. Binns: Yes, your Honor.

The Court: Let the record so show. Call your next witness.

Mr. Binns: Call Mr. Mallory.

G. E. MALLORY,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: G. E. Mallory.

Mr. Binns: Your Honor, counsel has offered to stipulate and I will try to state the stipulation.

The defense will stipulate that Mr. Mallory is a chemist, familiar with the nature of smoking opium and would testify that the contents of the brass cans which are in evidence as Government's Exhibit No. 5 and Government's Exhibit No 7 is smoking opium.

Mrs. Root: The defendant Gonzalez will stipulate that the gentleman would so testify. [68]

Mr. Mandel: So stipulated.

Mr. Binns: And is there any question as to his being an expert?

Mrs. Root: I will stipulate that he would testify that he is an expert and had been in the business.

The Court: Let us put on the evidence. I have some questions I want to ask if there is any question about this being smoking opium. If that is an issue in the case the jury is entitled to know this witness' experience and his knowledge on the subject matter.

Direct Examination

By Mr. Binns:

Q. Where do you reside, Mr. Mallory.

A. San Francisco, California.

10 Josephine Gonzales vs.
(Testimony of G. E. Mallory.)

Q. And what is your position there?

A. Chemist employed by the United States Treasury Department.

Q. How long have you been a chemist?

A. Approximately 25 years.

Q. How long have you been employed by the Treasury Department?

A. Approximately 25 years.

Q. Are you familiar with smoking opium?

A. Yes, sir.

Q. Will you please relate your qualifications as an [69] expert in the field of smoking opium?

A. I graduated from the University of Colorado in chemistry and pharmacy and I have made an analysis of narcotics for approximately 25 years for Government Bureaus.

Q. Are you familiar with smoking opium?

A. Yes, sir.

Q. I show you Government's Exhibit 5 in evidence, and ask you if you have ever seen those before? A. Yes, sir.

Q. How can you tell that you have?

A. My initials will be on them and I brought them down to this courtroom from our laboratory.

Q. And where did you receive them?

A. By registered mail on the 25th day of January, this year.

Q. From where?

A. From the Narcotic Bureau of Los Angeles.

Q. Did you make an examination of the substance contained in those cans?

(Testimony of G. E. Mallory.)

A. Yes, sir.

Q. In your opinion what was in those cans?

A. Smoking opium.

Q. You will notice there is a substance which is being exuded by some of those cans. Will you tell us what that substance is? [70]

A. That is smoking opium.

The Court: Do you know the value of this opium?

The Witness: No, sir; not at the present time.

Q. (By Mr. Binns) I show you Government's Exhibit 7—it is a can removed from Government's Exhibit 7, and ask you if you have seen that before? A. Yes, sir.

Q. Did you make an examination of the contents of that can? A. Yes, sir.

Q. Can you tell us what, in your opinion, is in that can? A. Smoking opium.

Mr. Binns: You may cross examine.

Cross Examination

By Mrs. Root:

Q. I would like to know if the can that was given to you separately—I would like to know if all the opium in all of the cans that you examined was alike?

A. No quantitative determination or analysis was made. It was only qualitative.

Q. What about the qualitative?

A. As far as I could tell they were all similar but without a quantitative analysis that is only a mere guess.

(Testimony of G. E. Mallory)

Q. And what is your occupation?

A. Chemist.

Treasury Department.

Q. How long?

A. About.

Q. How long?

Treasury.

A. Yes.

Q. Are you?

A. Yes.

Q. Will you?

an [6] expert?

A. I graduated.

in chemistry and

analysis of narcotics.

for Government Bureau.

Q. Are you familiar with?

A. Yes, sir.

Q. I show you Government of
denial and ask you if you have
before? A. Yes, sir.

Q. How can you tell that?

A. My initials will be on
them down to this courtroom.

Q. And where did you receive?

A. By registered mail on
May this year.

Q. Where?

A. From the Treasury Bureau.

Q. Did you receive any?

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(T

of Rudolph S. Pena.)

ican language would be unless it would

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m.

u first see him?

defendant on the 10th floor of
ber 22, 1945.

tion with your luries?

Q. You first taxed to the
us who vas in the

Exhibit 7—
Exhibit 7, and with me
fore? A.

Q. Did you make
of that can? A.

Q. Can you tell us what
that can? A. Smoking op

Mr. Binns: You may cross

Cross Examination

By Mrs. Root:

Q. I would like to know if the
given to you and I would be
all the opiure and how
was alike?

A. No quantity was
was made. It was

Q. What about the

A. As far as I could
but without a quantitative
mere guess.

(Testimony of G. E. Mallory.)

Mrs. Root: Thank you very much. That is all.

Mr. Mandel: No cross examination. [71]

The Court: That is all.

Mr. Binns: Mr. Pena.

RUDOLPH S. PENA,

called as a witness by and on behalf of the plaintiff,
having been first duly sworn, was examined and
testified as follows:

The Clerk: Will you state your full name?

The Witness: Rudolph S. Pena.

Direct Examination

By Mr. Binns:

Q. Where do you live, Mr. Pena?

A. Los Angeles, California.

Q. How long have you lived here?

A. 24 years.

Q. Where are you employed?

A. Los Angeles Police Department, member of
the Narcotic Detail.

Q. Are you familiar with the Spanish language?

A. Yes, sir.

Q. Is that your native language?

A. It is.

Q. You say "Spanish language." Is that similar
to the Mexican language?

A. You say "Mexican language". I don't know

(Testimony of Rudolph S. Pena.)

what the Mexican language would be unless it would be Indian. [72]

Q. Are you acquainted with the defendant Santana? A. I am.

Q. Where did you first see him?

A. First saw the defendant on the 10th floor of the Hall of Justice October 22, 1945.

Q. Was that in connection with your duties?

A. Yes, sir.

Q. Now then, at the time you first talked to the defendant Santana can you tell us who was in the room beside yourself and the defendant?

A. My partner, Sergeant Hokum, was with me and the defendant.

Q. Did you have a conversation with the defendant at that time? A. I did.

Q. Will you tell the jury what was said by yourself and what was said by the defendant to the best of your recollection in that conversation?

Mrs. Root: I understand this is directed as to the defendant Santana only?

Mr. Binns: That is correct.

The Court: And so limited.

Q. (By Mr. Binns) You might also tell the jury in what language the conversation was carried on.

A. The conversation was carried on in Spanish. I [73] introduced myself to Mr. Santana. I asked him if he were Mr. Santana and he answered that he was. I told him that I was a police officer of the city of Los Angeles and I had come to talk

(Testimony of Rudolph S. Pena.)

to him regarding the car and the case, the charge that he was arrested on. He wanted to know what I wanted to know about it.

First I asked him if that car belonged to him and he said that it did; that he had purchased it in San Francisco September 15th and had received the car September 31st. He paid \$400.00 for it from a man by the name of Jose Gonzalez. I asked him if he had driven the car down to Los Angeles and he stated that he had; that he had been here in Los Angeles approximately a week, maybe ten days. He was not sure. I asked him if at any time from the date that he received the car to the date that he was arrested had his car been out of his possession or if he had loaned it to anyone. He stated that he had not loaned it to anyone. However, on one or two occasions another man had ridden in the car with him.

I asked him if that man had been in that car any time alone and he said not to his knowledge; that in all the times when this man was with him he also was in the car.

I asked him if he had driven the car there on that evening and he said that he had. that he had arrived there at approximately 9:30 p.m. and that the officer came shortly before midnight. He did not remember the exact time. [74]

I asked him if he had locked the car. He said that he had not. I asked him if made a habit of leaving his car unlocked and he said "No," that it depended upon where he parked it. If he parked

(Testimony of Rudolph S. Pena.)

it on the street, why, he would lock it. Sometimes he parked in a lot and had to leave the keys in it. I said, "But on this occasion you left it unlocked?" And he said, "Yes, I left it unlocked."

I asked him if he knew anyone who might have left that can of opium in his car and he said he didn't know anybody that would—that handled opium.

I asked him how long he had known Mrs. Gonzalez, who was arrested in his other car, and he stated over a period of two years but that most of his dealings had been with her husband.

I asked him if he meant "dealings in narcotics" and he said "No, I don't mean that." I said, "What kind of dealings do you mean?" And he said he meant farm implements.

That was the extent of the conversation at that particular time.

Q. All right, did you have any further conversation with him? A. Yes, sir; I did.

Q. When was this second conversation?

A. January 15, 1946 at the Federal Narcotic Bureau.

Q. In the Federal Narcotic Bureau? [75]

A. Yes.

Q. Who was present besides yourself and the defendant Santana, if anyone?

A. Inspector Beckner of the State Narcotic Bureau, Sergeant Russell of the City Police, and Inspector Crane and Inspector Carpenter of the Federal Narcotics Bureau.

(Testimony of Rudolph S. Pena.)

Q. And this conversation again took place in Spanish? A. Yes, sir.

Q. Will you tell the jury to the best of your recollection what you said and what the defendant Santana said?

Mrs. Root: May we understand this is directed against Santana only?

The Court: Yes, it is only considered as evidence against Santana and in no wise is to be considered as evidence against the other defendant.

The Witness: At this time I greeted him and he said, "Well, what is this?" He says, "I see they have arrested me again," and I said, "That is right." I said, "You have been indicted by a Federal Grand Jury and you are going to be prosecuted in the Federal Court." He said—I asked him, "Is there anything you wish to add other than what you told me the time before when we had our previous conversation?" And he said, "No, I don't know of anything." I said, "Well, tell me how long you had known this lady prior to the date you were arrested?" And he said, "For two years." I said, [76] "Did you know anything about this opium found in your other car?" And he said, "Well, I don't know except that I have always known she was mixed up in some sort of thing like that," and I said, "What do you mean by that?" and he said, "Everybody knows it down there on the border." He says, "It is common knowledge," and I said "Common knowledge of what?" "That she is an opium smuggler." I said, "Do you know that from

(Testimony of Rudolph S. Pena.)

your own knowledge or is it something you have heard?" He said, "Why, everybody knows it." He said, "I thought you fellows knew that." I said, "We don't. I am asking you now. Did you know she had this opium in the other car?" And he said, "No, I didn't know anything about that." At that time I asked him again if he wished to make any statement regarding the can that was found in his car on the evening of his arrest and he said he didn't know anything about it and that was the substance of that conversation.

Q. (By Mr. Bins) Did you have any other conversations with him?

A. I did not; no, sir.

The Court: I want to specifically instruct the jury at this time that this testimony is only to be considered as evidence against the defendant Santana and is not to be considered by the jury in any manner as any evidence tending to prove any of the issues in this case as to the defendant Josephine Gonzalez. [77]

Mr. Binns: That is all. You may cross examine.

Cross Examination

By Mr. Mandel:

Q. Mr. Pena, in your conversation with the defendant on October 22nd you asked him about the Dodge car, did you not? A. Yes, sir.

Q. And he stated it was his car when you questioned him about the ownership of the car?

A. That is correct.

(Testimony of Rudolph S. Pena.)

Q. Then he told you he had purchased the car in September of 1945 from some man by the name of Gonzalez in San Francisco?

A. That is correct.

Q. And then you asked him about the price of the car, did you not? A. I did.

Q. And you say now as you said before, it was \$400.00 that he told you he paid for the car?

A. That is the statement he made to me.

Q. As a matter of fact, didn't he tell you the car was paid for—the amount of the car was the sum of \$1,400.00? A. He said \$400.00.

Q. Did you find out whether it was \$400.00 or [78] \$1,400.00 he paid for the car?

A. I did not.

Q. I don't want to question your Spanish, Officer, but you are sure you are correct about that amount?

A. Yes, because I made the comment—I said, "That is awfully cheap for a car of that year." He said, "Well, the car is in very poor condition."

Q. As a matter of fact, you are mistaken about the amount he told you he paid for it, isn't that true?

A. No. As far as I recollect he said \$400.00.

Q. You did not take down in shorthand notes the conversation? A. I did not.

Q. Your recollection is that he told you \$400.00 rather than \$1,400.00?

A. He said \$400.00.

Q. That was a 1941 Dodge car?

(Testimony of Rudolph S. Pena.)

A. I know that. That is why I commented. I asked him how it happened he only paid \$400.00 and he said it was in very poor condition.

Q. Now then, you talked to him some 12 days subsequent to his arrest and he was in the County Jail?

A. That is correct.

Q. And that was in connection with the State case?

A. Yes, sir. [79]

Q. Involves the same thing that is involved here?

A. Yes, sir.

Q. All right. Now then, when you asked him about——

The Court: Counsel, when you say “the same thing as is involved here,” I think that should be corrected. It is a different offense entirely.

Mr. Mandel: I meant the same opium—the same opium that is involved in this particular case is the same opium that is involved in the other case.

The Witness: That is correct.

Q. (By Mr. Mandel) Now then, when you talked with him about the facts of this case he told you he had ridden with some other individual, when you asked him about, if somebody else had access to the automobile?

A. Yes, sir. He said on two occasions another party had ridden in the car with him.

Q. I will ask you whether or not he told you he had gone to a moving picture theatre prior to his arrest, either one or two days prior to his arrest, when the car was used by—I don’t remember his name.

A. He did not make the statement to me.

(Testimony of Rudolph S. Pena.)

Q. He didn't? A. No, sir.

Q. Was his name—was the name "Luis" ever mentioned to you? [80]

A. Not to me.

Q. Did you ask him who the individual was or individuals were that were riding in the car?

A. I did.

Q. What did he say?

A. He said he didn't know his name; that he had met him on a previous visit to Los Angeles.

Q. Did he say he was Spanish or otherwise?

A. Did he say the other party was Spanish?

Q. Yes. A. Yes.

Q. Did he say that he was related to either Mr. or Mrs. Gonzalez? A. He did not say.

Q. You questioned him about the car being locked and you asked him particularly whether it was his habit of locking the car?

A. That is right.

Q. And he gave you an explanation that on occasions, depending where he was, he would lock the car or otherwise, is that right?

A. That is true.

Q. You particularly stressed the fact as to whether he locked it on this particular occasion?

A. I did. [81]

Q. And his answer was what?

A. That he did not.

Q. You questioned him also about the contents of this can of opium, did you not?

A. I did.

Q. What did he say about that?

(Testimony of Rudolph S. Pena.)

A. He said he didn't know anything about it.

Q. All right. And he told you when he got possession of the car, did he not? A. He did.

Q. And did he say with whom he came down from San Francisco when he purchased the car?

A. He didn't say. He said he had driven the car down.

Q. All the way down?

A. To Los Angeles, yes, sir.

Q. And was anything mentioned about the Plymouth car?

A. I asked him if it was his car and he said it was.

Q. Did he say what understanding he had about the Plymouth car going to Mexico?

A. He said he loaned it to Mrs. Gonzalez who had wrecked her personal car.

Q. That was when he was up in San Francisco?

A. That is true. [82]

Q. And he gave the keys to her husband or sent them to the hospital, is that right?

A. He didn't say how she had gained possession of the car. He said he loaned it to her.

Q. Then the car was used, the Plymouth car was used in Los Angeles while he was in San Francisco, is that correct?

A. He didn't say where it was used. He didn't say that he knew where the car had gone. All he knew was Mrs. Gonzalez had borrowed his car. That was the Plymouth.

Q. And was there any conversation about what

(Testimony of Rudolph S. Pena.)

disposition there was to be made of the Plymouth car afterwards?

A. Not at the initial conversation. He mentioned something about it January 15th.

Q. What did he say on January 15th?

A. That she was to have delivered the car to his wife.

Q. What happened? What did he say about that?

A. Only that she was supposed to have taken the car to his wife in Mexico.

Q. And did he tell you that she did not bring the car to his wife in Mexico?

A. No. It was quite obvious she didn't.

Q. Quite obvious, but you, of course, don't know what transpired? A. No. [83]

Q. As far as Mrs. Gonzalez was concerned, but in any event the car was not delivered there, is that right?

A. To the best of my knowledge, no.

Q. And you don't know whether Mrs. Gonzalez went to Mexico, however, whether by machine or otherwise, do you?

A. I have no knowledge of that, no.

Q. I mean did he tell you about that in the conversation?

A. No, he did not. The only statement he made was that she was to have delivered the car to his wife in Mexico.

Q. Did he say what else she had to deliver?

A. No.

(Testimony of Rudolph S. Pena.)

Q. Did he mention anything about a ring?

A. No, sir.

Q. And an overcoat?

A. No, he didn't mention it.

Q. "Abrigo" in other words?

A. No, sir.

Q. And didn't he say that she was to deliver that car to his wife in Mexico and he was to get \$100.00 from her for the purpose of purchasing tires for his Dodge car?

A. No, he didn't make those statements to me.

Q. Did he bring that out in his conversation with you at all? [84]

A. No, sir.

Q. He did not?

A. No, sir.

Q. Did Mr. Santana tell you in the conversation or did you ask him, rather, whether or not he had seen Mrs. Gonzalez from the time he was in San Francisco and returned to Los Angeles, up to the time she came back and was arrested?

A. I don't believe that was asked by either me or the defendant.

Q. You didn't go into that at all?

A. No, sir, I did not.

Q. Didn't he explain to you just how the car—something about the possession of the car?

A. Which car?

Q. The Plymouth car?

A. Only that he had loaned the car to Mrs. Gonzalez.

Q. And he didn't discuss with you as to what

(Testimony of Rudolph S. Pena.)

happened afterwards, after he loaned the car to Mrs. Gonzalez? A. He did not.

Q. You never discussed this matter with Mrs. Gonzalez in his presence or otherwise, did you?

A. I have never spoken to the lady.

Q. Did you ask him how he happened to be in the trailer at Mrs. Gonzalez' place?

A. Yes, sir; I did. [85]

Q. What did he say?

A. He said he obtained permission from her to sleep in her trailer—that he had spent a couple of nights there.

Q. From her or Mr. Gonzalez?

A. From Mrs. Gonzalez.

Q. When? A. In San Francisco.

Q. In San Francisco? You mean some time in September?

A. Some time before he came down here, yes.

Q. Did he tell you how he happened to come to Los Angeles or happened to come to this state from Mexico?

A. Yes, he mentioned something about it.

Q. What did he say?

A. That he came up to buy some farm implements.

Q. Did he tell you he came for the purpose of buying a Dodge car?

A. He said he did buy a car.

Q. Did he tell you that he came here for that specific purpose?

(Testimony of Rudolph S. Pena.)

A. I don't recall his having made that statement.

Q. Didn't he tell you he came with Mr. Gonzalez, the husband of Mrs. Gonzalez, in Calexico, and went with him for the purpose of buying a car from Mr. Gonzalez' brother in Los Angeles, and when he arrived in Los Angeles it occurred [86] that Mr. Gonzalez' brother had returned to San Francisco? Didn't he tell you that?

A. No, he did not.

Q. Didn't he tell you that and Mr. Gonzalez had left for San Francisco when Mr. Gonzalez and Mr. Santana had arrived in Los Angeles in his Plymouth car? Did he tell you that?

A. He did not go into that part of buying the automobile.

Q. You did not question him about that at all?

A. No, I did not.

Q. Did he tell you that he had purchased on other occasions farming equipment from Mr. Gonzalez? A. That is right.

Q. Did he tell you he bought two Caterpillar tractors and a truck—GMC truck from him?

A. He enumerated a few articles. I don't recall exactly what they were.

Q. And that was the specific mission for which he came to Los Angeles?

A. That is what he told me.

Q. Or California? A. Yes, sir.

Q. And he stated, did he not, to you in the conversation that he left Mexicala some time in Sep-

(Testimony of Rudolph S. Pena.)

tember, the 5th or [87] 6th of September of last year, is that correct?

A. He said the early part of September. He didn't give any dates.

Q. And arrived in Los Angeles from there and went up to San Francisco? A. That is true.

Q. You ascertained he went up there and purchased the car in San Francisco, is that correct?

A. That is the statement he made to me.

Q. Well, did you ascertain whether that was true or not? A. No, I did not.

Q. As far as you know then, that is, from the statement the defendant made to you—you have no reason to doubt that is the truth, have you?

The Court: That is argumentative.

Mr. Mandel: That is argumentative, yes, your Honor.

Q. In any event, you have not checked to determine the truth of it? A. No.

The Court: All you are testifying to is what he told you?

The Witness: That is true.

Q. By Mr. Mandel: Now, was there any further conversation with the defendant that you have not testified to? [88]

A. There was one little bit of conversation regarding one time that he was allegedly shot at at the border, which I brought out and asked him if it wasn't true—that at one time when he was being searched at the border he tried to get away and one of the custom agents had shot him.

(Testimony of Rudolph S. Pena.)

Mr. Mandel: I ask that be stricken.

The Court: You asked for the conversation, counsel. You invited it.

The Witness: And he said that—no, that wasn't the way it was—that somebody else shot him. It wasn't the custom agent.

Q. By Mr. Mandel: That man has never been arrested before in his life, has he?

A. Not to my knowledge.

Q. Neither here nor in Mexico? Isn't that correct?

A. I don't know whether he has been in Mexico or not.

Q. But in the United States you ascertained that he has not been arrested before?

A. That is my knowledge, yes.

Q. Now, did you have occasion to talk to Mr. Gonzalez at all during this time?

A. Talk to whom?

Q. Mr. Gonzalez?

A. I don't know Mr. Gonzalez.

Q. You never talked to Mrs. Santana in reference to this [89] case, did you?

A. I have not.

Q. When you talked to Mr. Santana on the 15th of January in connection with this particular arrest, that was after the indictment by the Federal Grand Jury, is that correct?

A. That is true.

Q. When you had the second conversation?

A. Yes, sir.

Q. And that was in the Spanish language as you have stated?

A. It was.

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(Testimony of Rudolph S. Pena.)

Q. You stated at that time he added one other matter that was not discussed in the first conversation and that was that he stated, or, he volunteered the statement that he knew that Mrs. Gonzalez was mixed up in opium—I mean with drugs—is that what you testified to?

A. Yes, he made that remark.

Q. Did he tell you that he had heard that in the County Jail?

A. He said he had heard it at the border and he said it was common knowledge as far as he was concerned—everybody knew it.

Q. As a matter of fact, didn't he tell you he just ascertained it in the County Jail? [90]

A. No, he didn't make that statement.

Q. In all other respects the testimony was the same as the conversation on October 22nd?

A. Yes, it was.

Q. Do you know anyone by the name of Francisco Julio Sanford?

A. Not personally, no.

Q. You have heard of him? A. I have.

Mr. Mandel: That is all.

Mr. Binns: No further questions.

Mrs. Root: No questions.

Mr. Binns: May this officer be excused?

Mrs. Root: As far as we are concerned, he may be.

Mr. Mandel: Yes.

Mr. Binns: Call Officer Russell.

DAVID A. RUSSELL

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: David A. Russell.

Direct Examination

By Mr. Binns:

Q. Where do you live, Mr. Russell?

A. Los Angeles, California. [91]

Q. How long have you lived here?

A. About 25 years.

Q. Where are you employed?

A. Los Angeles Police Department, Narcotics Division.

Q. How long have you been so employed?

A. A year and a half in the Narcotics Division and 7 years on the Police Department.

Q. Were you present with Agent Beckner on the evening of October 9th? A. I was.

Q. Were you out at the trailer camp on that evening? A. I was.

Q. Were you in the car which followed Mrs. Gonzalez' car? A. I was.

Q. Drawing your attention to this suitcase, which is Government's Exhibit 2, did you see that suitcase on that occasion? A. Yes, I did.

Q. Were you present when that suitcase was opened? A. I was.

The Court: Counsel, may I suggest—

(Testimony of David A. Russell.)

Mr. Binns: I am not going through the entire story.

The Court: If those facts are disputed you can call this witness in rebuttal. Let us not go over the same thing [92] until we find out there is a dispute.

Mr. Binns: All right, your Honor.

The Court: As I understand from the opening statements, each defendant accuses the other and excuses himself. That seems to be the issue.

Q. By Mr. Binns: I draw your attention to Government's Exhibit 5 as it sits before you. It is in a box. Have you ever seen that box before?

A. Yes, I have.

Q. Where was that box when you saw it before?

A. On the evening of October 9th, 1945, it was contained within that suitcase.

Q. And were the cans in that box?

A. They were.

Q. And did you personally count the cans in that box? A. I did.

Q. How many were there? A. 16.

The Court: From your experience on the Narcotic Detail, do you have any knowledge as to the value of the opium in those cans?

The Witness: Well, only by hearsay. It depends upon the location where it is sold. All the way from \$250.00 to \$400.00 a can.

Mr. Binns: No further questions, your Honor.

Mr. Mandel: No questions.

Mrs. Root: No questions.

Mr. Binns: Agent Polcuch.

OSCAR W. POLCUCH

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Oscar W. Polcuch.

Direct Examination

By Mr. Binns:

Q. Where are you employed, Mr. Polcuch?

A. Treasury Department, Bureau of Narcotics.

Q. You are stationed in this building?

A. Yes, sir.

Q. I draw your attention to Government's Exhibit 5, which sits before you. Have you ever seen that before? A. Yes, sir.

Q. And where did you see it?

A. Inspector Beckner turned that evidence over to me on January 18th.

A. I initialed it for identification, sealed it, and sent it via registered mail to the Government chemist at San Francisco. [94]

Q. I show you an envelope marked Government's Exhibit 7 and ask you to examine the can in that envelope and tell us if you have ever seen that before? A. Yes, sir.

Q. Did you do the same thing with that can?

A. I did.

Q. Now then, if you will examine Government's Exhibit 5 you will notice there is a jar in there.

A. Yes, sir.

(Testimony of Oscar W. Polcuch.)

Q. Have you ever seen that jar before?

A. I did.

Q. Will you take it out, please? Can you tell us where you have seen that jar before?

A. This exhibit, which consisted originally of 16 cans, I removed one of those cans and emptied the opium content of it into that jar and then I sent the empty can to the customs chemist in Baltimore, Maryland, for a metallurgical examination.

Q. At the time you first saw that there were 16 cans in it? A. Yes, sir.

Q. Now then, in your experience in the opium traffic are you acquainted with the price at which opium is at the present time being sold?

A. Yes, sir. [95]

Q. Can you tell us what the value of one of those cans is in Los Angeles at the present time?

A. From \$200.00 to \$250.00. That is, if it is purchased in quantities.

Q. And is that in this area? A. Yes, sir. tion.

Q. Will you tell us what the price of one of those cans would be down below the Mexican border?

A. From information which I received it would be from \$75.00 to perhaps \$100.00.

Q. Were you formerly stationed in the San Francisco area? A. Yes, sir.

Q. Can you tell us what the price of one of those cans is there?

The Court: That is getting out of our jurisdiction.

(Testimony of Oscar W. Poleuch.)

Mr. Binns: Just wanted to show he is a well informed man, your Honor.

Q. Are you acquainted with the defendant Mrs. Gonzalez? A. Yes, sir.

Q. Where did you first meet her?

A. In the County Jail at Los Angeles. I believe the first time was on January 18th. I am not quite certain. It was on or about the 18th of January.

Q. And in the County Jail? A. Yes, sir.

Q. And did you have a conversation with her at that time?

A. I did. I went up alone and asked her if she cared to make any statement in connection with this case and she told me at that time that she wanted to make a clean breast of everything and she said she would tell me everything she knew about it.

I did not take a statement from her at that time. I told her that I would be back in a few days and on January 22nd Inspector Beckner, Agent Craig and I went up to the County Jail and interviewed her in connection with this matter.

Q. Who is Agent Craig?

A. He is a Narcotic Agent in charge of the Bureau of Narcotics in Los Angeles.

Q. He is your boss? A. Yes, sir.

Q. All right. Now then, you had a conversation with her, you say, in your office here?

A. Not our office here, no.

Q. Where was that conversation?

A. It was in the County Jail.

(Testimony of Oscar W. Polcuch.)

who was then occupying the trailer, and he told her to leave this Plymouth in Brawley, on the east side of town, and to write a postcard, addressing it to a box number in Calexico, which he stated was the address of Santana's wife, and that she would pick up the car.

She then stated that she proceeded to Brawley. Upon arriving there she placed her daughter in school and she had intended to leave the car in Brawley. However, there was a bus strike on and she couldn't obtain any bus transportation back to Los Angeles, so she decided to drive back in Mr. Santana's car. That she arrived in Los Angeles about two o'clock on October 9th. She drove directly to her trailer and she entered it and there was no one there. She observed a man's—a man's clothing hanging in there and she stated she remained there, waiting for Mr. Santana.

She stated she waited until about 8:30 or so that night and as he did not return she decided to spend the night with her daughter or daughter-in-law, I don't remember just which. She stated she took this suitcase and some personal clothing and put them in the car and drove to this relative's house. She arrived—it was, I believe, in La Canada. She arrived there about nine o'clock and that was when she was placed under arrest. [100]

I asked her if she had taken that suitcase with her to Brawley and she said "No", that she had left it in the trailer and that as far as she knew that suitcase still contained the tools she had re-

(Testimony of Oscar W. Polcuch.)

moved from her own personal automobile. And she further said that she had left the keys to the suitcase and to the trailer in the trailer for Mr. Santana's use.

I then asked her if it wasn't unusual for her to carry a suitcase of tools to her relative's house, if all she intended doing was spending one night there. She replied that it seemed strange but that is what she did. So, she took the suitcase with her and was arrested that night in possession of opium, which was contained in there. She stated further she did not examine the suitcase after she returned from Brawley.

Q. By Mr. Binns: Is that all you recall at this time?

A. She also stated that she knew nothing about the opium in that suitcase; she had had no traffic in any narcotics and that she knew of no one that did. She stated she had known Mr. Santana for over a period of two years and that as far as she knew he had always been engaged in the sale of farming implements, purchasing them here in the United States and selling them in Mexico.

That was about the substance of our conversation.

Mr. Binns: You may cross-examine. [101]

Cross-Examination

By Mrs. Root:

Q. Did she make any statement to you about having gone to the cleaners in the afternoon of October 9th? A. Yes, she did.

(Testimony of Oscar W. Polcuch.)

Q. And tell us about that, please?

A. She stated that while she was waiting at the trailer for Mr. Santana to return that she had taken some clothing to the cleaners and then she had also gone to a drug store nearby to have lunch.

Q. And did she state to you as to the hour of the day that she had done those things?

A. No. She stated that she had returned to the trailer from Brawley at about two o'clock and it was after that time that she had gone to the cleaners and then to the drug store for lunch.

Q. And did she also ask you or make a suggestion that if the officer cared to check that fact they could find the ticket where she had left the cleaning there?

A. I don't recall that.

Q. In other words, you do not recall hearing her say anything about the ticket that she then had in her possession showing the leaving of certain clothing at the cleaners?

A. No, I don't.

Q. You did not take any of this down in writing, did [102] you, Officer?

A. I did. I jotted down the notes as she related her story.

Q. In other words, a synopsis, as one would do?

A. Yes, sir.

Q. In a conversation but not word for word?

A. No.

Q. And you told us that the narration started with about a half hour of her talking before she got down to the point at issue, and was that about

(Testimony of Oscar W. Polcuch.)

the fact that she had resided as a farmer in Imperial Valley?

A. That and also that her farming activities and the purchasing of farming implements and going into the family background and so on, a story which is irrelevant to this.

Q. She made the suggestion to you, did she not, Officer, that if you cared to check her background and living habits as a farmer and the raising of vegetables and the mother of children you could check with the various law enforcement agencies of Brawley, is that right?

A. I don't recall whether she made that suggestion or not. She may have.

Mrs. Root: That is all, thank you.

Q. By Mr. Mandel: Just a couple of questions, Inspector Polcuch. In the conversation that you had with Mrs. Gonzalez, after rambling on you say for some time, she finally stated [103] that she met Santana for the first time in San Francisco some time in 1943?

A. No. She stated with reference to the month of September, 1945, that when she and her husband had gone to San Francisco for a vacation that they had met Santana there.

Q. In September, 1945, they met Santana in San Francisco?

A. Yes; but that was not the first time that they had met. She stated that she had first met Santana some time in 1943 as I recall.

Q. That is what I am getting at. A. Yes.

(Testimony of Osear W. Polench.)

Q. Before I get to that, however, you mentioned something about—you say that they met Mr. Santana, according to the conversation, you say you had with Mrs. Gonzalez, that Mr. Gonzalez and Mrs. Gonzalez met Mr. Santana in San Francisco by chance. Is that what she told you?

A. Yes; that was right around Labor Day of 1945.

Q. And that is what she told you in the conversation about how they met in San Francisco?

A. Yes, sir.

Q. And in 1943 she said she met Santana for the first time. Where did she say she met him?

A. As I recall, it was in Westmoreland. I am not certain. Wherever their farm is. [104]

Q. I misunderstood you. I thought you said in 1943 in San Francisco she met him. A. No.

Q. I am in error on that point. Did she tell you that—pardon me. Did she tell you when she arrived in Los Angeles from Westmoreland, before she was arrested?

A. As I recall, it was on the 9th. It was on the 9th of October between two and three o'clock in the afternoon.

Q. About two or three o'clock in the afternoon October 9th? A. Yes.

Q. And she had been in Los Angeles before that?

A. No. She stated she went—she came directly to the trailer from Brawley.

(Testimony of Q.)

Q. Did she say
at that time?

A. No. She said
the trailer during her
back.

Q. Did she say when

A. It was on the night

Q. At what time did she

A. Right around 8:30—
trailer to visit her relative.

Q. And where was the su the trailer?
Was it in the trailer itself? [105]

A. That is right.

Q. And was Mr. Santana there at the time, did
she say? A. She said he was not there.

Q. That was about 8:30 in the evening?

A. Yes, sir.

Q. Now, when she said she went to Mexicali to
to see Mrs. Santana, did she tell you that she took
anything along with her other than the car?

A. She didn't say she had gone to Mexicali to
meet Mrs. Santana.

Q. Did she tell you that Mr. Santana had di-
rected her to leave the car with his wife in Mexi-
cali? A. No, that is not what she told me.

Q. She never told you that? A. No.

Q. Did she tell you anything about the delivery
of a ring and an overcoat that Mr. Santana had
given her husband or her to deliver to his wife in
Mexicali? A. No, she didn't mention that.

Q. Did not mention that to you? A. No.

108
(Testimony of Q.)
Did she say that she
you to previous

(Testimony of Oscar W. Polcuch.)

Q. Before I get to that, however, you mentioned something about—you say that they met Mr. Santana, according to the conversation, you say you had with Mrs. Gonzalez, that Mr. Gonzalez and Mrs. Gonzalez met Mr. Santana in San Francisco by chance. Is that what she told you?

A. Yes; that was right around Labor Day of 1945.

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A. As I recall, it was on the 9th. It was on the 9th of October between two and three o'clock in the afternoon.

Q. About two or three o'clock in the afternoon October 9th? A. Yes.

Q. And she had been in Los Angeles before that?

A. No. She stated she went—she came directly to the trailer from Brawley.

(Testimony of Oscar W. Polcuch.)

Q. Did she say she had the suitcase in the car at that time?

A. No. She said the suitcase had remained in the trailer during her entire trip to Brawley and back.

Q. Did she say when she picked up the suitcase?

A. It was on the night of October 9th.

Q. At what time did she say she picked it up?

A. Right around 8:30—at the time she left the trailer to visit her relative.

Q. And where was the suitcase in the trailer? Was it in the trailer itself? [105]

A. That is right.

Q. And was Mr. Santana there at the time, did she say? A. She said he was not there.

Q. That was about 8:30 in the evening?

A. Yes, sir.

Q. Now, when she said she went to Mexicali to to see Mrs. Santana, did she tell you that she took anything along with her other than the car?

A. She didn't say she had gone to Mexicali to meet Mrs. Santana.

Q. Did she tell you that Mr. Santana had directed her to leave the car with his wife in Mexicali? A. No, that is not what she told me.

Q. She never told you that? A. No.

Q. Did she tell you anything about the delivery of a ring and an overcoat that Mr. Santana had given her husband or her to deliver to his wife in Mexicali? A. No, she didn't mention that.

Q. Did not mention that to you? A. No.

(Testimony of Oscar W. Polcuch.)

Q. Did she mention anything about the fact that she didn't tell you—I take it she did not tell you that he and Mrs. Gonzalez and Mr. Gonzalez went up to San Francisco when Mr. Jose Gonzalez was not in Los Angeles—didn't tell you about that, did she? [106]

A. No. As I recall her story, she and her husband had gone up to San Francisco and it was by chance that they met Mr. Santana there.

Q. Did she say where she had met him?

A. With reference to San Francisco?

Q. That is right.

A. I believe it was at a dry cleaning place operated by Jose Gonzalez, the defendant's brother-in-law, defendant Gonzalez' brother-in-law.

Q. You of course independently do not know whether this car, this Plymouth car that Mrs. Gonzalez was in, came to Los Angeles?

A. I don't know of my own knowledge, no.

Q. You don't know when it was under surveillance? A. No.

Q. You never had a conversation with this defendant, did you?

A. I arrested him on January 15th, and it was then that I found out that he knew very little English. He appeared to understand a little but that was about all.

Q. Not sufficiently to carry on a conversation?

A. (No answer.)

Q. You had not seen him—you did not know the man before this time, before the 15th of January?

(Testimony of Oscar W. Polcuch.)

A. No, I didn't. [107]

Q. And you were not present at any previous occurrence in October? A. No.

Q. Did she tell you that—Mrs. Gonzalez I am speaking of now, that when Mr. Santana was in San Francisco that she had left with her Chevrolet car—that she had a Chevrolet car. Did she tell you that?

A. She stated she had left in her own Chevrolet car for Los Angeles.

Q. Did she tell you she met with an accident and asked her husband to ask Mr. Santana for the keys to the Plymouth car which was in Los Angeles?

A. I don't recall that.

Q. Or did she tell you this—did she tell you that Mr. Gonzalez and Mr. Santana came from the Imperial Valley up to Los Angeles?

A. No. She stated that after the accident her husband and Mr. Santana came from San Francisco to Los Angeles, as I recall her story.

Q. But she never at any time told you, as far as you can recall, that her husband and Mr. Santana left the Valley for Los Angeles?

A. Would you repeat the question?

(Question read.)

A. No, not that I recall. [108]

Q. Did she at any time tell you that Mr. Santana talked with her husband for the express purpose of buying a car?

A. No, sir, I don't recall that.

Q. Didn't tell you that?

(Testimony of Oscar W. Polcuch.)

A. (No answer.)

Q. There was never a conversation in the Spanish language in the presence of both defendants, was there? A. Not to my knowledge.

Q. Statements of one were never brought to the attention of the other at any time, was there?

A. Not as far as I know.

Q. Never confronted each other with reference to any statements that were made?

A. Not in my presence.

Q. And you personally not having talked with him in Spanish you never did get his statement?

The Court: Counsel, he has answered that question several times.

Mr. Mandel: I think he may have, yes, your Honor.

The Court: There is no use in going over it again.

Mr. Mandel: Very well. I am going to try to expedite this. I think that is all. Thank you very much.

Mr. Binns: No further questions.

I have some photos here, your Honor, and counsel have [109] agreed to stipulate that these photos are photographs of the back of the Dodge car driven by the defendant Santana and the other four photos are of the glove compartment of that car.

Mrs. Root: So stipulated.

Mr. Mandel: Yes.

Mr. Binns: Then they may be marked Government's next in order.

The Court: Each one separately and pass them to the jury.

(The photographs referred to were marked as Plaintiff's Exhibits Nos. 11 to 14, inclusive, and were received in evidence.)

Mr. Binns: That disposes of the Government's case, you Honor. The Government rests at this time.

Mrs. Root: There will be an objection to the introduction of the cans of opium in evidence, based on the original objection that there was not a search warrant that therefore it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mrs. Root: May the record denote an exception taken, please?

The Court: Yes.

Mr. Mandel: May I discuss the matter outside the presence of the jury, your Honor? [110]

The Court: Yes; there are some preliminary matters that must be taken up in the absence of the jury. It is almost time for the afternoon recess, so at this time the jury will be excused to retire to the jury room until recalled. In doing so, you will remember the admonition previously given you by the court.

(Whereupon, the jury retired and the following proceedings were had without the presence of the jury:)

The Court: You may proceed. Let it appear the jury is now absent.

Mr. Mandel: If it please your Honor, I realize that the gist of a conspiracy as was stated in United States vs. Falconi and other cases, the gist of the conspiracy is an agreement among the conspirators to commit an offense——

The Court: Counsel, just a moment. Will you please make your motion?

I would first like to ask counsel for the Government why they are insisting upon a conspiracy count. These defendants or either of them, either had the opium in their possession or they didn't have it.

Without the conspiracy count there is sufficient evidence here in my opinion, to let it go to the jury.

These two people were in close contact with one another and there was opium in similar cans in both cars. The opium, according to the testimony, had the appearance of having a [111] common source. That is an inference that the jury could draw from the evidence and for that reason I do not see why the jury should be confused with a conspiracy count. The instruction on a conspiracy count is a long one and by the time it is finished the jury will be in a state of confusion. In this case you have opium which was found in the possession of each of the defendants—at least it was found in cars operated by each defendant, which certainly is sufficient, if the jury wants to so find, to find the defendants guilty.

If they find only one defendant guilty then there is no conspiracy. If they find one party had nothing

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do with it then there isn't any conspiracy because
the party cannot be guilty of conspiracy.

I am wondering what the Government's theory
is on that.

Mr. Binns: Well, your Honor, of course, I am
not going to bother your Honor with my position
in the office. You know that I am simply sent down
here to try a case.

The Court: In any event, I am not going to rule
upon that question until the case is in; but I will
consider Mr. Mandel as having a motion for an
instructed verdict on the conspiracy count and the
motion will be denied and an exception noted.

Mrs. Root: Will that be as to both defendants?

The Court: And I will consider the motion was
made by counsel for both defendants. But I do
wish counsel for the [112] Government would give
some consideration to my suggestion.

Mr. Binns: I understand the court's position
and I will consider it.

The Court: In the first place, there has been no
offense here unless the defendants had possession
of the opium because everything deals with posses-
sion.

Mr. Binns: That is correct.

The Court: And if the jury found them guilty
on the first two counts and also found them guilty
on the third count, which carries a much less penalty
than the other two counts, the court would not im-
pose any heavier penalty by reason of the third
count than if there was only one count. And from
practical point of view the conspiracy count

simply confuses the issue before the jury and would make it look complicated when, as a matter of fact, it is very simple. It is just a matter of fact as to whether or not these defendants, and the jury so finds beyond a reasonable doubt, had opium in their possession, or either one of them. The evidence here is that both parties were found with opium in their possession.

Mr. Binns: I realize it is a complicated instruction, your Honor, because I had to spend about as much time drawing the one conspiracy count as I did the other two.

The Court: We will take a recess at this time for ten minutes. [113]

(Short recess.)

The Court: Do you stipulate the jurors are present in the jury box and the defendants are in court with their counsel?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: Yes, your Honor.

The Court: You may proceed.

Mr. Mandel: Mrs. Santana, will you take the stand? We will need an interpreter.

(Whereupon, Armida Lopez was duly sworn as interpreter from Spanish into English and from English into Spanish.)

MARIA del REFUGIO SANTANA,

called as a witness by and on behalf of the defendants, having been previously duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Maria del Refugio Santana.

Direct Examination

By Mr. Mandel:

Q. State your name, please.

A. Maria del Refugio Santana.

Q. Mrs. Santana, you are the wife of Jesus Santana who is seated at my left?

A. Yes, sir.

Q. And you and your husband reside in Mexicali, do you? [114]

A. Yes.

Q. And do you know Mrs. Gonzalez?

A. Just recently I have met her.

Q. When did you see her?

A. 8th of October.

Q. Where did you see her?

A. In my home.

Q. At your home? And did you have any prior notification of the fact that she was coming to your home?

A. No, I didn't.

Q. And was there a conversation that you had with her then?

A. Yes. She told me that my husband was sending the car.

Q. And that is what car?

A. Plymouth.

(Testimony of Maria del Refugio Santana.)

Q. And did you see the Plymouth car?

A. No, I didn't see it.

Q. Do you remember when your husband left Mexicala?

A. Around the first of September.

Q. And was it stated what he was going—why he was leaving Mexicala?

A. He was coming to buy a car.

Q. Did you know that? A. Yes. [115]

Q. What type of business is your husband in?

A. In the ranch.

Q. What does it consist of?

A. Agricultural business and buying implements.

Q. How much do you have under cultivation?

A. 200 acres.

Q. And your husband has this under cultivation?

A. Yes.

Q. And what else does he do besides the cultivation of crops that he has down there?

A. Buying and selling implements of agriculture.

Q. Farm implements? A. Yes.

Q. Do you own the land or do you rent it?

A. We rent it.

Q. Do you have a lease on it?

The Court: What materiality has that, counsel?

Q. (By Mr. Mandel) Now, then, did you know Mr. Gonzalez before October of last year?

A. No.

Q. Now, you never met Mrs. Gonzalez before the 8th of October of last year?

(Testimony of Maria del Refugio Santana.)

The Court: She has answered that, counsel.

Q. (By Mr. Mandel) You have not seen her since that time? [116] A. Yes.

A. No, not until October when she went to my home.

Q. Did you have a conversation with her at that time?

A. She told me that my husband was sending the car and she couldn't leave the car because she was ill and she said that she would bring the car back the following day.

Q. Said she would bring the car back the following day? Did you ever see her the following day?

A. No, she didn't come back after that day.

Q. Did you understand that the car had been in Mexicala?

The Court: Just a moment. Not what she understood.

Q. (By Mr. Mandel) Did you know of your own knowledge that the Plymouth car was brought by Mrs. Gonzalez to Mexicala?

A. Yes. Various people told me that they had seen her cross the line and she had the car.

Mrs. Root: I move that go out.

Mr. Mandel: I move that be stricken.

The Court: Yes. You did not see the Plymouth car?

The Witness: No.

Q. (By Mr. Mandel) She came to see you on foot, is that it?

A. Yes; I believe she went to my house in a taxi.

(Testimony of Maria del Refugio Santana.)

Q. But she told you that she was coming to bring the Plymouth the next day? [117]

A. Yes; she would bring it to me the next day without fail. She was ill that day and would not leave it.

Q. All right. Do you know whether or not she was to have brought you a ring and an overcoat?

Mrs. Root: Object to that on the ground it is immaterial.

The Court: I do not see what materiality it has, counsel: I don't think very much of this testimony is material, counsel. You had better not go too far afield or I will have to stop it myself.

Q. (By Mr. Mandel) Did you receive a card from your husband explaining the fact that Mrs. Gonzalez was delivering the automobile to you?

A. No.

Q. Did you get a request for \$100.00—that is, a request from your husband that you get \$100.00 for him for the purchase of some tires?

The Court: Counsel, what materiality is that?

Mr. Mandel: Well, it is a part of the picture.

The Court: I do not know that it is. The question here in this case is whether or not this defendant had anything to do with the opium and that question does not tend to prove or disprove that issue.

Mr. Mandel: But it is all part of the conversation, if your Honor please. We are not trying to implicate the [118] co-defendant; we are trying to clear our client.

(Testimony of Maria del Refugio Santana.)

The Court: I know what you are trying to do and that is your responsibility, but whether they talked about tires or anything else of that nature is not material. We are only interested in one point here and that is who did this opium belong to and who brought it into California and who was handling it.

Q. (By Mr. Mandel) You had this Plymouth car in Mexicala before your husband left for the Valley, is that correct?

A.- He left in the Plymouth car.

Q. In other words, you had it before October—he had it before September 1st, 1945?

A. Yes, sir.

Q. You remained in Mexicala while he left for the Valley? A. Yes.

Q. How long has your husband been engaged in the agricultural business?

A. In that location he has been about four years.

Q. And how long in the general area of Mexicala? A. Nine years.

Mr. Mandel: That is all. [119]

Cross Examination

By Mrs. Root:

Q. Mrs. Santana, you reside in Mexico, do you not? A. Yes, Mexicala.

Q. And that is, of course, your residence with your husband, the defendant in this action, Mr. Santana? A. Yes.

Q. And he left Mexico, that is he, meaning Mr.

(Testimony of Maria del Refugio Santana.)

Santana, left Mexico on this particular occasion about the first part of September in the Plymouth, is that correct? A. Yes.

Q. Now, on the date that you first met Mrs. Gonzalez when was that in regard to October 8th?

A. The 8th of October.

Q. Had you not known her previously to October 8th? A. No.

Mrs. Root: That is all.

Redirect Examination

By Mr. Mandel:

Q. In September of 1945, it could have been the 5th or 6th of September when your husband left? A. About the 5th or 6th.

Q. You are not sure of the date?

The Court: Just a moment, counsel. Do not lead the witness. [120]

Mr. Mandel: That is all.

Mr. Binns: No questions by the Government.

Mrs. Root: Nothing further.

Mr. Mandel: I will put on the defendant, Mr. Santana. We have another witness under subpoena.

The Court: Is the witness you have under subpoena present in the courtroom?

Mr. Mandel: He is being subpoenaed. He is in the County Jail, your Honor.

Mr. Binns: Might I ask if he is held under a Federal charge?

Mr. Mandel: No.

Mr. Binns: If he is we could get him for you.

JESUS SANTANA,

called as a witness in his own behalf, having been first duly sworn, was examined and testified through Armida Lopez, the interpreter heretofore previously duly sworn, as follows:

The Clerk: State your full name.

The Witness: Jesus Santana.

Direct Examination

By Mr. Mandel:

Q. Mr. Santana, do you speak English?

A. Almost nothing. Hardly nothing at all.

Q. Will you please raise your voice? Hold your voice [121] up. You were living in Mexicala, lower California, prior to your arrest in October of last year?

A. Yes.

Q. And you were engaged in what business?

A. In the ranch business, and I buy cars and trucks—Caterpillar tractors.

Q. When did you first become acquainted with Mr. Gonzalez?

A. Approximately two years ago.

Q. Is he in court at this time?

A. Yes, he is back there.

Mr. Mandel: Will you please stand up, Mr. Gonzalez?

Q. Now, did you ever buy any cars from Mr. —or tractors or Caterpillars from Mr. Gonzalez? Prior to October, last October or September?

A. Yes; I bought a truck from him and through him I bought a Caterpillar and another truck.

(Testimony of Jesus Santana.)

Q. He introduced you to someone in Calexico from whom you made your purchases?

A. In Calipatria. We bought them in Calipatria to sell them in Mexicala.

Q. You purchased about two or three times from him, did you?

A. We made three transactions.

Q. One or more of the transactions was by introduction through Mr. Gonzalez, is that it? [122]

A. The Dodge I bought through him from a friend of his. I bought the Dodge from his brother.

Q. And you bought the Caterpillars through him?

A. Yes. He tells me who has a Caterpillar when I want one and I go and buy it.

Q. Now, I will ask you if you had a conversation with Mr. Gonzalez prior to the time that you left for the United States, with reference to the purchase of any automobile or tractor or anything?

A. The Dodge.

Q. What was the conversation?

Mrs. Root: Just a minute. Is that with Mr. Gonzalez?

Mr. Mandel: Yes.

Mrs. Root: I will object to it on the ground it is hearsay to the action as far as I am concerned, and particularly to my client, Mrs. Gonzalez, it is incompetent, irrelevant and immaterial.

Mr. Mandel: If your Honor please, there was a conversation between Mrs. Gonzalez and Officer Polcuch with reference to meeting Mr. Gonzalez by Mr. Santana, by chance in San Francisco. Surely

(Testimony of Jesus Santana.)

the jury is entitled to know what we stated in our opening statement to the jury that the reason why this man came to the United States, and in chronological form as to what happened from the time he had the conversation with Mr. Gonzalez until the time of his arrest. [123]

The Court: I am going to let this man tell his story, but the jury is instructed that any conversations he had without the presence of the defendant Gonzalez is not binding upon her.

Q. By Mr. Mandel: What was the conversation with Mr. Gonzalez just before you came to the United States?

A. The conversation we had was that we were to come to Los Angeles to buy a car and we came to Los Angeles in a little truck and when we arrived in Los Angeles we stayed—I had to take the trailer.

Q. How did you come to Los Angeles? In what vehicle? A. In the Plymouth.

Q. You did not come in the Dodge? You came in your Plymouth? A. Yes.

Q. Then you were supposed to go in Mr. Gonzalez' truck, isn't that correct?

A. Yes, and the truck that he was going to get—he didn't get it; we came in the Plymouth.

Q. You came in your Plymouth. Then what did you do after you went with the Plymouth? Did you pick up Mrs. Gonzalez?

The Court: Just a moment, counsel. I am permitting you to go into matters that I think are im-

(Testimony of Jesus Santana.)

material, but this court has always taken the position of permitting a defendant [124] to tell his entire story if it doesn't go too far astray. I want a man to feel when he comes into this court that he has had a full opportunity to tell his story and his full day in court, but I do not want counsel to do the testifying.

Let the witness tell his own story.

Mr. Mandel: All right.

Q. Mr. Santana, how did you leave lower California—who was with you in the car?

A. My sister and brother-in-law and myself.

Q. You mean you came to Los Angeles?

A. No, to Brawley.

Q. Is that where you met Mr. Gonzalez?

A. That is where Mr. Gonzalez was waiting for me.

Q. Who accompanied you to Los Angeles from Brawley? A. Mr. Gonzalez.

Q. And was Mrs. Gonzalez with you at the time?

A. No, she was in Los Angeles.

Q. You and Mr. Gonzalez alone went to Los Angeles?

A. Yes. We arrived here in Los Angeles, the two of us, and went to the trailer and there was Mrs. Gonzalez.

Q. Then what happened there?

A. The next day Mr. Jose Gonzalez—he wasn't here, the one I was supposed to purchase a truck from, so the next day they invited me to go to San Francisco with them.

(Testimony of Jesus Santana.)

The Court: Will you read that answer? [125]

(Answer read.)

Mrs. Root: Now, if your Honor please, I think the use of the name "Mr. Gonzalez" is probably like using the name "Mr. Jones" or "Mr. Smith" in the American or English language. I think we should be able to ascertain from counsel's questions as to who this Mr. Gonzalez is that they are talking about.

Q. By Mr. Mandel: Which Gonzalez was it, Mr. Santana? A. Alfonso Gonzalez.

Q. Who is Alfonso Gonzalez?

A. Mrs. Gonzalez' husband.

Q. All right. Now then, when you were in Los Angeles and you did not find Jose Gonzalez, then what did you do?

A. They invited me to San Francisco with them, going to San Francisco on a trip and I went with them.

Q. And at that time did they talk with you about the car? A. Yes.

The Court: What car?

The Witness: The Dodge.

Q. By Mr. Mandel: All right. Who went then to San Francisco?

A. The three of us. We left my Plymouth in a garage in San Fernando and the three of us, Mr. and Mrs. Gonzalez [126] and myself, went to San Francisco.

The Court: In which car?

The Witness: In the Chevrolet.

(Testimony of Jesus Santana.)

Q. By Mr. Mandel: The Plymouth car was left in San Fernando at that time? A. Yes.

Q. All right, and then what happened?

A. We arrived in San Francisco and we stayed at the house of one of Mrs. Gonzalez' relatives. We stayed there that night and the following morning Mr. Alfonso Gonzalez took me to see Mr. Jose Gonzalez but Mr. Gonzalez was not there. And then the following day he arrived in San Francisco.

Q. And did you go to Jose Gonzalez' place?

A. Yes.

Q. About when in the month of September was that? That was the month of September, I take it?

A. About the 10th or 11th of September.

Q. All right. And then did you see Jose Gonzalez?

A. On the second day he wasn't there when we first arrived but I saw him about the second day after we had been there.

Q. Then what happened at that time?

A. We talked about the car. He wanted to sell me the car for \$1,600.00. I thought at that time it was too much [127] money. I remained there a few days and then later he came down on his price and I got the car for \$1,400.00. I bought it but I didn't get it. I didn't get possession of it until the last day of September because he needed it for his work. In the meantime they were repairing his own car and he needed this car for his work.

Q. You paid him cash \$1,400.00 for it?

A. Yes, I paid him cash \$1,400.00.

(Testimony of Jesus Santana.)

Q. All right. And where did you remain when you were in San Francisco from about the 11th or 12th of September until the end of September?

The Court: Why are we interested in that? How does that tend to prove or disprove any issue in this case?

Mr. Mandel: For this reason: We are attempting to show that while he was up in San Francisco this woman had an accident, your Honor please, and asked for the keys to his car.

The Court: Then why don't you get down to the accident? She did not have the accident, according to her testimony, until she was on her way home. Let us get down to the fact in the case.

Q. By Mr. Mandel: While you were in San Francisco did you get a request that either Mr. or Mrs. Gonzalez have the use of your Plymouth car in Los Angeles or San Fernando?

A. While Mrs. Gonzalez was in an automobile accident [128] around the 18th, Mr. Gonzalez came over and asked permission to use the car and I gave him the keys.

Q. All right. And did you know that Mrs. Gonzalez had left San Francisco for Los Angeles in the Chevrolet?

A. I didn't know it. The first I knew of it was when she had the accident.

Q. And you left San Francisco after you got possession of the Dodge with whom?

A. I came here with Alfonso Gonzalez.

Q. And that was about when?

(Testimony of Jesus Santana.)

A. It was either the first of October or the last day of September.

Q. All right. And then when you came to Los Angeles, where did you go?

A. When we first came to Los Angeles we arrived at the trailer. After that we went to a friend, a relative's house where the Plymouth was.

Q. And then what happened?

A. Then Mr. Gonzalez and I went to sleep in the trailer and Mrs. Gonzales stayed in her house with her sister.

Q. And did she have possession of the Plymouth car at that time?

A. Yes, she had the Plymouth and we had the Dodge.

Q. And did you have a conversation with Mr. and Mrs. Gonzalez with reference to the Plymouth car? [129]

A. I stayed in the trailer that night and I gave my overcoat and a ring to them to take to my wife in Mexicali.

Q. To Mr. or Mrs. Gonzalez? A. Mr.

Q. Wasn't there something else said about a letter?

A. Took the car, the overcoat and the ring to take to my wife.

Q. Did he mention anything about a note?

A. Yes, with a little note requesting \$100.00 from my wife.

Q. And what was it with reference to?

Mrs. Root: Now, I am sorry to interrupt, but

(Testimony of Jesus Santana.)

if your Honor pleases, this transaction as between Mr. Gonzalez and Mr. Santana I take it that it certainly is again hearsay as to my client and incompetent, irrelevant and immaterial.

The Court: I think the objection is good so far as the defendant Gonzalez is concerned. Counsel, I don't like to restrict you, but you are covering a lot of territory that does not tend to prove or disprove anything in this case.

Mr. Mandel: Well, if your Honor please, with reference to the trip down to Mexico, what I am trying to bring out from this witness is that there was a certain instruction, that that car was to remain in Mexico, and then all of a sudden it comes back.

The Court: Then why don't you bring that out? [130]

Q. By Mr. Mandel: Did you tell Mr. Gonzalez or Mrs. Gonzalez to take that Plymouth car and leave it with your wife? A. To Mr. Gonzalez.

Q. Did you know that Mrs. Gonzalez took the car?

A. Yes. I saw them leave. I gave them \$10.00 for gasoline.

Q. Forget the \$10.00. Anyway, did Mr. or Mrs. Gonzalez then leave for Mexico?

A. Yes, the three of them left. They had a little child with them.

Q. Did you intend that the machine be brought back to Los Angeles by Mrs. Gonzalez?

Mrs. Root: Just a minute. We will object to

(Testimony of Jesus Santana.)

that on the ground what his intentions were is incompetent, irrelevant and immaterial.

Q. By Mr. Mandel: What did you direct Mr. Gonzalez to do with the car?

A. To deliver it to my wife and he promised he would that very night.

Q. All right. Did you ever see Mrs. Gonzalez from that time on until the date of your arrest?

A. I didn't see them again until the day of the arrest.

Q. Did you ever see this suitcase before, Mr. Santana?

A. They had that suitcase in my car when they left for [131] Mexicali.

Q. Did you ever have possession of this suitcase at any time?

A. No, I never had possession. It isn't mine. When they went to San Francisco they had it with them.

Q. Was that suitcase ever in your possession?

A. Never.

Q. All right. Now, before September 30th of last year you never had possession of the Dodge, isn't that correct? A. No.

Q. You arrived in Los Angeles, you say, either the latter part of September or the first day of October of 1945, is that correct?

A. I am not sure—could have been the second or third of October.

Q. During that period of time you did not have the use of the Plymouth car, did you?

(Testimony of Jesus Santana.)

The Court: He testified Mrs. Gonzalez took it.

Q. By Mr. Mandel: From September 30th—that may be true—from the latter date did you have the use of the Plymouth car, from September 30th or, I will put it this way: Did you ever have use of the Plymouth car from the time you were in San Francisco in the early part of September until the date of your arrest? [132]

A. I hadn't touched the Plymouth from the day I left for San Francisco.

Q. Up until the time of your arrest, is that correct?

A. Didn't touch it. That is the first time I saw it after that time.

Q. With reference to the Dodge car, from September 30th until October 9th, the day of your arrest, did you always have possession of the Dodge car?

A. From about the 1st day of October until I was arrested.

Q. All right. Do you know a man by the name of Luis?

A. Luis? It is Mrs. Gonzalez' brother. I met him through them.

Q. Was he driving the car during any time from September 30th until October 9th?

A. He was driving up until the 9th of—he drove it up to the 9th of October.

The Court: Will you read that answer?

(Answer read.)

(Testimony of Jesus Santana.)

Q. By Mr. Mandel: Did Luis drive the car during that time?

A. At times he drove it two or three hours. I would go in the show and he would take the car.

Q. During the time that you were in the show he took the car? [133]

A. Yes. I used to lend it to him.

Q. Did you ever at any time ever put any can of opium in any part of that Dodge car?

A. I never put anything like that in it.

Q. Did you ever know that the can of opium was in the car?

A. No. Why should I have known it? If I had known——

Q. Did you ever know that there was a can of opium in the car?

A. No, I didn't know a thing.

Q. Did you ever know it until the officer took it out of the glove compartment of the car?

A. Not until the officer got it from the car.

Q. Did you speak to the officers the first time that you were arrested in this particular case? Did you speak to the officers in Spanish, English, or how?

A. They could speak a little Spanish and I could speak a couple of words of English, but we couldn't understand.

Q. When they came to your trailer—I mean to the trailer that you occupied, did you see Mrs. Gonzalez at that time?

(Testimony of Jesus Santana.)

A. I didn't see her until the officers got her out of the car and put her in the trailer.

Q. Then what did you say when you saw her?

A. I asked her why she left in my car and she said because there were no buses.

Q. What else did she say?

A. That is about all.

Q. Did you say anything about why you had been arrested or how you had been arrested?

A. No, I didn't.

Q. What else was said at that time?

A. That was all that was said at that time. They took me to jail and that was the end of that.

Q. Was there someone who saw you at the County Jail after you were arrested?

A. Mr. Gonzalez came up there with some attorney and got me out of jail. She came, Mrs. Gonzalez came up to the jail with her attorney or an attorney and told me to say that that car that she was in—that she was sending that car to her daughter.

Q. What did you say about that?

A. I told her, "Why should I say that the car was mine?" And she said, "Well, that is the only way you can save yourself," and later she came there with another attorney who could speak Spanish and this attorney told me that he was coming to claim——

Mrs. Root: Just a minute. What some attorney told him would be incompetent, irrelevant and immaterial, and [135] certainly not binding upon Mrs. Gonzalez.

(Testimony of Jesus Santana.)

The Court: It is immaterial anyhow what an attorney told him. Was Mrs. Gonzalez present?

The Witness: The first time she came there with one attorney and then the second time the attorney came without her.

The Court: That is immaterial.

Q. By Mr. Mandel: When the officer came to the trailer you were asleep at that time, I take it?

A. I was lying in bed.

Q. What time did you go to bed that night?

A. About ten.

Q. And did you see Mrs. Gonzalez before you—you have already testified you did not see her. Did you lock the car at that time?

A. I never locked it when I left it there. All I locked was the back of it.

Q. You never locked the front—that is, the front part of the car?

A. No, I never did. It was safe there.

Q. Do you remember having a conversation with Officer Pena in the Spanish language?

A. Yes. One day he came to the jail and took me to the attorneys' room in the jail.

Q. Did you tell him that you purchased the car in [136] San Francisco for \$400.00?

Mrs. Root: Now, if your Honor please, do we understand this is not against Mrs. Gonzalez and is hearsay as to her?

The Court: It is hearsay and the objection on the ground of hearsay, as far as the defendant Gonzalez is concerned, is sustained. This testimony is

(Testimony of Jesus Santana.)

not binding in any way, shape or form upon the defendant Gonzalez.

The Witness: He asked me if I bought the car and I said, "Yes," that I paid \$1,400.00 for it. He says, "That is very little money for a car like that," and I said, "Yes, but there is a lot of repairs to be done." He misunderstood me. He thought I said \$400.00. I said \$1,400.00.

Q. By Mr. Mandel: You definitely told him \$1,400.00?

The Court: That is immaterial, counsel, whether he said \$400.00, \$1,400.00, or \$14,000.00.

Mr. Mandel: That was the conversation Mr. Pena related. He stated \$400.00.

The Court: Maybe he did, but what materiality does it have in this case?

Mr. Mandel: I guess it would have none.

The Court: He admits he bought the Dodge car and whether he paid \$400.00 for it or \$1,400.00 makes no difference.

Q. By Mr. Mandel: Now then, you had a conversation with Mr. Pena on a subsequent occasion?

A. Just had a few words. He asked me a few questions. [137] That was all.

Q. What did he say?

A. He came over and asked me—he wanted to find out about this automobile and I told him.

Q. What did you say to him?

A. We didn't talk very much. He just asked me—wanted to find out what this was all about and I told him, that I didn't know—it wasn't my busi-

(Testimony of Jesus Santana.)

ness. I had my other occupations to take care of.

Q. Did you tell him that you had come to Los Angeles or San Francisco by car?

A. Yes, I told him.

Q. And did you ever tell him that you knew that Mrs. Gonzalez was engaged in the narcotic traffic in Mexico?

Mrs. Root: Of course that is hearsay again as to Mrs. Gonzalez.

The Court: Yes, the objection will be sustained as to Mrs. Gonzalez and the jury instructed it is not binding upon the defendant Gonzalez. You may ask the question now.

Mr. Mandel: Will you read the question?

(Question read)

A. No, I did not tell him that.

Q. You never knew at any time anything about the narcotics, either in the Plymouth car or in the Dodge car, isn't that a fact? [138]

A. No—why should I know? I didn't know a thing about that.

Q. Did you tell Mr. Pena at any time that someone else had access to the Dodge car during the time that you had it? A. No, I didn't.

Q. Did you mention the name of Luis to him?

A. Yes. I told him I didn't know his last name.

Q. And what did you say about Luis to him?

A. Well, he asked who was with me and I told him some fellow by the name of Luis.

(Testimony of Jesus Santana.)

Q. Now, you were arrested on the 9th of October? A. Yes.

Q. Did you tell Officers Reid and Beckner when they asked you about the can of opium in your glove compartment, as to whether or not you knew anything about that particular narcotic?

A. I didn't tell them anything about that. I didn't know anything about it.

Mr. Mandell: You may cross-examine.

Mrs. Root: Do you want to go first?

Mr. Binns: It doesn't make any difference to me.

Cross-Examination

By Mr. Binns:

Q. What did you grow down on your ranch in Mexico? [139] A. Cotton.

Q. Did you ever raise any opium?

A. No. Why should I plant opium?

Q. How many trips did you make to the United States across the border in 1945?

Mr. Mandel: That is not material, your Honor.

The Court: Objection overruled.

The Witness: About twice with my brother.

Q. By Mr. Binns: Did you see Mr. Gonzalez on each occasion when you came into the United States?

A. No, I never have seen him here.

The Court: What do you mean by "here"?

The Witness: I have never seen him here in Los Angeles. I have seen him in Imperial Valley.

(Testimony of Jesus Santana.)

from San Francisco, you came with Mr. Gonzalez—
Alfonso Gonzalez?

A. Yes; he was coming with me.

Q. You at that time, after arriving in Los Angeles rented the trailer of Mrs. Gonzalez, did you not?

A. No, I did not.

Q. When did you rent the trailer, if at all?

A. I never rented it.

Q. Did you pay her any money for the use of the trailer?

A. No, I didn't rent it. When Mr. Gonzalez left from here he gave me the keys to the trailer and said that I could use it. I had no money. I had \$20.00 left with me.

Q. So you moved into the trailer with your effects, is that right?

A. I had no personal effects there when I came back from San Francisco. Before I left San Francisco I left a suit of clothes in the trailer and the only change that I had was a pair of trousers that Mr. Gonzalez loaned to me.

Q. Did you see belongings of Mrs. Gonzalez in the trailer when you moved in?

A. I didn't see a thing. They loaned me a little corner in the trailer so I could sleep there.

Q. In other words, you did not look to see what was in the trailer, is that right?

A. No, I didn't.

Q. You were there how many nights and days?

A. About three nights.

(Testimony of Jesus Santana.)

Q. You could not tell me one thing that is on the inside of the trailer, is that right.

A. I had no authority to go looking for anything. I didn't look at anything. I just went to bed there.

Q. You saw the suitcase that is marked here in evidence sometime on the trip to San Francisco, did you?

A. Yes. They took their suitcase with them.

Q. Was that the suitcase that you saw on that trip?

A. Yes.

Q. You saw tools in that suitcase too, didn't you?

A. No, I didn't look in. I didn't look inside the suitcase. Why should I?

Q. So you didn't know at any time what was on the inside of the suitcase?

A. No; I didn't see what was in the valise.

Q. When was the last time you saw the suitcase that is now marked in evidence?

A. The 5th of October when they left Mexicala they put that suitcase in my car.

Q. Was Mrs. Gonzalez in Mexicala? [145]

The Court: Just a moment. Will you read the question and answer?

Mr. Mandel: I think, your Honor, he means the 5th of September.

The Court: Do you mean October or September?

The Witness: When they took my car was on the 5th of October.

Q. (By Mrs. Root) Mr. Santana, did they take

(Testimony of Jesus Santana.)

your car—you are speaking of the Plymouth car, I take it, is that right, you are talking about the Plymouth car?

A. Yes, when they were taking my Plymouth car to my home.

Q. Well, did they take it to—in Mexicala or did they take it, meaning Mr. and Mrs. Gonzalez, in Los Angeles?

A. When we come back from San Francisco they left in my car about the 5th of the month to take his car to his wife.

Q. But where did they take the Plymouth car from, Mr. Santana? Withdraw the question. Mr. Santana, where were you when you gave Mr. and Mrs. Gonzalez your Plymouth car?

A. Near the trailer.

Q. In Monterey Park, in Los Angeles County?

A. Yes, where the trailer was here in Los Angeles.

Q. And that was the last time you saw the [146] suitcase in Los Angeles County, is that correct?

A. Yes, when they left for Mexicala.

Q. Now, Mr. Santana, you have spoken of Luis. Are you talking about Luis Gonzalez or some other Luis?

A. I am talking about Luis, a brother of Mrs. Gonzalez.

Q. And that was whom you claim that you rode with in the Dodge car on the 8th of October and on the 9th of October, is that correct?

(Testimony of Jesus Santana.)

A. Yes, and from the 5th of October, since Mr. and Mrs. Gonzalez left, Luis and I were together and we would use the car.

Q. Can you tell me any one person that saw you and Mr. Luis Gonzalez together on the 8th or 9th of October, or from the 5th of October on?

A. I couldn't say who we visited. We visited several cocktail bars. We went to La Bamba. I didn't know anyone there.

Q. So that it is your testimony that you cannot name one person that saw the two of you together, Luis Gonzalez and yourself, between October 5th and October 9th?

A. No, because I don't know any of the bartenders or any of the people that were there.

Q. What time did you leave the trailer on October 9th, the last time? [147]

A. I left the trailer about eight o'clock. I left the trailer on the 8th and didn't return until the 9th in time to go to bed.

Q. In other words, you mean you came home on the early morning of October 9th?

A. You mean the trailer?

Q. Yes.

Mr. Mandel: That wasn't his testimony. He said on the 9th, he went to Olvera Street and retired.

The Court: Counsel, this is cross examination.

Mr. Mandel: I just wanted to clear that up.

The Court: Will you read the question?

(Question read.)

(Testimony of Jesus Santana.)

The Witness: Not until about between 9 and 10 o'clock on the 9th at night.

Q. (By Mrs. Root) And when had you last left the trailer?

A. I left the trailer on the 7th at ten o'clock in the morning. I didn't come back on the 8th. I came back on the 9th, between 9 and 10 o'clock.

Q. Had you driven your Dodge when you left on the 7th and came back on the 9th?

A. Yes, Luis and I were in the Dodge.

Q. So that you had had the possession of the Dodge away from the trailer when you left it on the 7th and that [148] you did not return until October 9th, is that correct?

A. Yes, Luis and I were together until noon on the 9th.

Q. So that you did not return from the time of your leaving on October 7th until you arrived at about nine or 9:30 on October 9th, back at the trailer, is that right?

A. Until I returned—until I returned the 9th at about ten o'clock when I went to bed.

Q. When did you loan the Plymouth to Mrs. Gonzalez?

A. I never loaned my Plymouth to Mrs. Gonzalez. I loaned it to Mr. Gonzalez and he took it back for me on the 5th.

Q. Didn't you loan the Plymouth car on or about the 7th, 8th or 9th to Mrs. Gonzalez?

A. No, I hadn't seen Mrs. Gonzalez since the

(Testimony of Jesus Santana.)

5th when they left. I had not seen her until the time we were arrested.

Q. You say that when you left the Dodge car at about ten o'clock upon your arriving on October 9th at the trailer, you did not lock the Dodge car?

A. I never locked it when I slept there.

The Court: Ask him if he locked it that night.

The Witness: No, I didn't.

Q. (By Mrs. Root) But the officer came in and asked you for the key to the Dodge car, didn't he?

A. Yes, the officers arrived and got the keys.

Mrs. Root: That is all, thank you.

Mr. Mandel: That is all, Mr. Santana.

Q. (By Mr. Binns) Mr. Santana, where were you with Luis from October 7th to October 9th?

A. We were driving the streets. Went to Santa Monica and drove here and there.

Q. Where did you sleep?

A. I slept in a hotel in Santa Monica on the 8th.

The Court: You slept where?

The Witness: I slept in a hotel in Santa Monica on the 8th.

The Court: Who paid the bill?

The Witness: Luis. I didn't have any money with me. And Luis wanted to pay for the room.

Q. (By Mr. Binns) Have you been able to recall Luis' last name?

A. No, I don't remember it.

Mr. Binns: No further questions.

Mr. Mandel: That is all.

(Testimony of Jesus Santana.)

Mrs. Root: I want to be clear about this brother-in-law Luis.

Q. Luis is the brother-in-law of Mr. Gonzalez or Mrs. Gonzalez?

A. It is Mrs. Gonzalez' brother.

Mrs. Root: That is all. [150]

Mr. Mandel: That is all.

The Witness: His last name is not Gonzalez.

A Juror: May I ask a question?

The Court: You may ask a question through the court if you desire.

A Juror: Where did the gentlemen sleep on the night of the 7th?

The Court: Where did he sleep?

The Juror: Yes, he testified he slept in Santa Monica on the night of the 8th but that he left the trailer on the 7th, so he was away from the trailer two nights.

The Court: Will you answer the question?

The Witness: In the trailer.

The Court: You said you left on the 7th, didn't you?

The Witness: There was only one night that I didn't sleep in the trailer and that was on the 8th.

The Court: I thought you said you left on the 7th.

The Witness: I must have made a mistake because there was only one night I didn't sleep in the trailer and that was on the 8th.

The Court: Does that answer your question?

(Testimony of Jesus Santana.)

The Juror: That answers the question but I understood him to say the 7th?

Mrs. Root: May I ask one question?

The Court: Yes. [151]

Q. (By Mrs. Root) Mr. Santana, what hour of the day or night did you leave on October 7th or 8th or whenever it was?

A. On the 8th I did not sleep in the trailer.

Q. (By Mrs. Root) All right, now on October 7th what time of the day or night did you leave, if you did leave on October 7th?

A. Well, I used to get up at——

Q. I am not interested in what you used to do. I want to know specifically the hour, Mr. Santana, that you left on October 7th, if you know?

A. I don't recall the exact time—between 8:30 and 9:00. At the time I used to get up.

Q. In the morning of October 7th when you got up you left, is that right?

A. Yes. At that time I came here to El Centro.

Q. And you didn't go back any time that day or that night, meaning October 7th?

A. Yes, I came back to the trailer on the 7th to sleep.

Q. And you went to bed then on the night of October 7th and what time did you get up in the morning of October 8th?

A. About the same time, around nine o'clock. That is the 9th. The 8th I did not sleep there. [152]

Q. So you got up on October 8th after having slept the night of October 7th and the early morning

(Testimony of Jesus Santana.)

of October 8th at about the hour of nine o'clock, is that right?

A. On the 7th I got up at 8:30 in the morning from the trailer and on the 8th I slept in Santa Monica and I got up about the usual time and I slept in Santa Monica on the night of the 8th and on the 9th I got up about 8:30 or 9:00 o'clock.

Q. So that you were in the trailer the night of October 7th and until 9 or 9:30 on October 8th, is that right, in the morning? A. Yes.

Q. Well, where was Luis then the night of October 7th? Was he with you in the trailer?

A. I don't know at night—we were together during the night and but I don't know where he spent the night.

Q. You mean during the day of October 8th?

A. Yes, we used to see each other on Third and Main every day but I didn't know where he was at night.

Q. Mr. Santana, I am not interested in what you used to do.

The Court: And I am not interested in this continued examination about the 7th and 8th.

Mrs. Root: The point is, if your Honor pleases. I would like to know and I am sorry I am not clear in my own [153] mind, but when this Luis situation comes in about driving the car, that is why counsel is interested in it.

The Court: That is the Dodge car you are speaking of?

Mrs. Root: Yes, about the Dodge car.

(Testimony of Jesus Santana.)

The Court: If you can determine that you may proceed.

Q. (By Mrs. Root) How many times was Luis in the Dodge car with you between the 7th and 9th?

A. I don't recall the exact number of times but two or three times. We used to see each other about two or three times a day. Used to meet at Third and Main.

Mrs. Root. That is all.

Redirect Examination

By Mr. Mandel:

Q. Mr. Santana, just before your arrest on the 9th there were occasions before the 9th when your car was used by Luis and you were in a theatre, isn't that correct?

The Court: Just a moment, counsel. That has been asked and answered.

Mr. Mandel: I didn't know.

The Court: Yes, it has been asked and answered two or three times.

Mr. Mandel: All right. Very well, that is all, Mr. Santana.

Mr. Binns: No further questions.

Mr. Mandel: Mr. Sanford, will you please take the [154] stand?

FRANK J. SANFORD

called as a witness by and on behalf of the defendant Santana, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Frank J. Sanford.

Direct Examination

By Mr. Mandel:

Q. Mr. Sanford, you are now in the County Jail serving a sentence for possession of opium, are you?

A. Yes, sir.

Q. You are in the same tank as Mr. Santana, is that correct?

A. That is correct.

Q. Before you came to the tank he was in the tank already, is that correct?

A. Yes.

Q. Did you ever see Mr. Santana before that time?

A. Never.

Q. Before you went into the tank?

A. No.

Q. Do you know a man by the name of Luis?

A. Yes.

Q. Do you know his last name? [155]

A. No, I don't know his last name.

Q. And did you ever have occasion to ride around in a Dodge car—may I see that picture, counsel? Did you ever have occasion to ride in a Dodge car with Luis?

A. Yes.

Q. Prior to the 9th of October?

A. Yes.

Q. Of last year?

A. Yes.

(Testimony of Frank J. Sanford.)

Q. Can you fix the time approximately when it was? A. The last time?

Q. Yes.

A. Well, it was the day before Mr. Santana and Josephine Gonzalez' arrest came out in the paper.

Q. You read of their arrest in the paper?

A. Yes.

Q. And when you saw the name "Santana" in the papers as a co-defendant with Josephine Gonzalez having been arrested, did you fix Santana as somebody that you had met or seen before?

A. No.

Q. What did the name "Santana" mean to you?

The Court: Just a moment. That calls for a conclusion of the witness.

Q. (By Mr. Mandel) Did you believe Luis—did you [156] associate Luis as Santana?

A. No.

Q. I mean at the time you read the account in the paper did you associate Luis with Santana?

A. No; I associated him as Gonzalez.

Q. As Gonzalez? A. Yes.

Q. You mean Santana you thought was Gonzalez?

Mrs. Root: Just a moment.

The Court: Just a moment, counsel. I don't know what counsel thinks about it, but this kind of testimony, in the court's opinion, is the poorest and weakest kind of testimony that can be presented in a court. To bring a confessed opium possessor into court as a witness, who is occupying the same tank as the defendant, is in the court's opinion weak

(Testimony of Frank J. Sanford.)

and almost unbelievable. In making that statement I want to advise the jury that that is my own opinion and that that opinion is in no way binding upon the jury.

Q. (By Mr. Mandel) When did you have a conversation with me for the first time, Mr. Sanford? A. Yesterday.

The Court: I meant that as no reflection on counsel.

Mr. Mandel: If your Honor please, I am sorry that this man is a convicted felon or whatever it is.

Q. Did you have occasion to go with Luis in a car? [157] A. Yes.

Q. What kind of car was it? A. Dodge.

Q. What was the color of the Dodge car?

A. Gray.

Q. Do you remember the license number?

A. No, I never take license numbers.

Q. I show you a photograph, Government's Exhibit 14. Will you look at that picture?

A. Yes.

Q. Does that picture indicate to your mind any particular car that you may have seen before?

A. I couldn't swear it is the same car but it looks like it.

Q. You don't see Luis in the courtroom at this time, do you? A. (No answer.)

Q. You don't see Luis at this time?

A. (No answer.)

Q. I say, do you see him in the courtroom at this time? A. I don't believe so, no.

(Testimony of Frank J. Sanford.)

Q. Well, when you were with Luis did you ever see Santana at any time? A. No.

Q. And when you were with Luis in the Dodge car—when [158] were you with him?

A. The day before the—the day before I read in the paper about Santana's arrest.

Q. And how long were you with him, do you remember?

A. Well, we drove in the car from Second and Fremont to Sixth and Hill.

Q. About how long was it?

A. Oh, could be ten minutes, at most.

Q. Did you at any time have occasion to see Luis before this time in the Dodge car?

A. No.

Q. How long have you known Luis?

A. I knew him about four days before—about the 2nd of October or the 1st, around there.

Q. About that? A. I couldn't say.

Q. And at no time did you see Santana?

A. No.

Mr. Mandel: You may cross examine.

The Court: Did you see any opium in that car?

The Witness: Not in the car.

Cross Examination

By Mr. Binns:

Q. Where did you see it?

A. Well, I didn't see it any place except when Luis [159] handed me the sample. That was the day that I was in the car but that was before I ever saw the car.

(Testimony of Frank J. Sanford.)

Q. I see. And what was the occasion for you going for a ride with Luis in this car?

A. Well, we had business and after the business was over for the day he just gave me a ride from Second and Fremont to Sixth and Hill.

Q. What business did you have?

A. Well, it was a transaction concerning opium.

Q. Did you buy it or sell it?

A. Neither.

Q. What did you do in connection with the selling of opium?

A. I introduced him to a buyer.

Q. Did you see—

The Court: Who did you introduce him to?

The Witness: A friend of mine.

The Court: What is his name?

The Witness: Well, sir, you see there was no buyer. We were going to take the opium to show it.

The Court: Who was the party?

The Witness: I think I can't say the name.

The Court: The court directs you to state the name.

The Witness: Well, his name is Pepper but I don't know the last name. [160]

The Court: Did you get the opium?

The Witness: No, sir.

Q. (By Mr. Binns) As I understand it, then, you and Luis were going to buy opium, is that it?

A. No.

Q. What were you going to do?

A. Luis was just, I suppose he was just—just a

(Testimony of Frank J. Sanford.)

go-between like myself for somebody else and he said that he could get rid of it and he came to me. Well, I told Luis I could get rid of it for him.

Q. In other words, you and Luis were going to sell some?

A. No, I wasn't going to sell anything.

Q. But Luis was going to sell it?

A. Yes, sir.

Q. Did you see the opium that Luis had?

A. No, just the sample.

Q. What did he take the sample from?

A. I don't know where he got it.

The Court: When did you see that sample?

The Witness: Well, that same day.

The Court: Were you in the car at the time?

The Witness: No, not in the car—outside the car, before I got in the car.

The Court: And where? [161]

The Witness: On College and North Broadway.

Q. (By Mr. Binns) Where did he have the sample?

A. We went in a bar and I asked him for the sample and he said he left it out on the street, so I told him to go get it. He went out and brought it.

Q. What was it when he brought it?

A. Opium.

Q. What does opium look like?

A. Gum opium, like all other opium.

Q. What color is it?

A. Well, it is dark, almost black. It was cooked ready for use.

(Testimony of Frank J. Sanford.)

Q. You did not see the container he had it in?

A. No.

Q. How much did he tell you he had for sale?

A. He said he could get me 100 cans.

Q. Is that the size transaction you went out to work that day?

A. Yes—no, I just went out to introduce him to my front.

Q. And you had only met Luis four days before?

A. Just about. I had seen him every day since then for three or four days.

Q. Do you know where he lives?

A. No. [162]

Mr. Binns: May we have a moment, please, your Honor?

The Court: As I understood your testimony, you were going to see the sample and then what did you intend to do?

The Witness: We expected to make a phoney bargain for him.

The Court: Make a phoney bargain?

The Witness: Yes, sir.

The Court: For what purpose?

The Witness: To get a hold of the opium without paying him for it.

Q. By Mr. Binns: Do you know Alfonso Gonzalez? A. Just by sight. I met him once.

Q. Did you meet him with Luis? A. Yes.

Q. Were they together on this transaction that you talked about?

A. Yes, they both came to me.

(Testimony of Frank J. Sanford.)

Mr. Binns: May I have this marked Government's next for identification?

(The document referred to was marked as Government's Exhibit No. 15, for identification.)

Q. By Mr. Binns: Mr. Sanford, I show you Government's Exhibit 15 for identification and ask you do you know the man who appears at the right?

Mrs. Root: I will object to this line of questioning on [163] the ground it is hearsay as to Mrs. Gonzalez. They are apparently referring to Alfonso Gonzalez, the husband of Mrs. Gonzalez. He is not on trial and it is, therefore, irrelevant, immaterial and incompetent as to her and is hearsay likewise.

The Court: I am going to restrict the examination at this time. However, it may be that under the conspiracy count the jury will have the right to consider this testimony except statements made by the defendant after the conspiracy, if any, terminated. Answer the question.

Q. By Mr. Binns: I asked you the gentleman on the right, in the forefront of the picture, do you know him? A. Yes.

Q. Who is that? A. Santana.

Q. Now then, I ask you the gentleman on the left in the forefront, who is that?

A. Gonzalez.

Q. Which Gonzalez? A. The one I met.

Q. That is the one you met? A. Yes.

Q. Mr. Adolph Gonzalez, will you please stand up?

[Testimony of Frank J. Sanford.)

Is that the one you are referring to as the one you met? A. Yes. [164]

Q. Now then, there is the third gentleman here in the foreground. Do you know that gentleman?

A. No.

Q. You don't know him? A. No.

Q. Is that the gentleman you have been referring to as Luis? A. No.

Q. That is not? A. No.

Q. Have you ever seen Luis since this occasion about which you testified when he came to you in a Dodge car?

A. No, that is the last time I saw him.

Mr. Binns: No further questions.

Q. By Mrs. Root: What did Luis look like? Describe him.

A. I don't know. He is short, dark. He has—I suppose he still has some, something like itch or something up around here—something like itch.

Q. What else? How big a man was he?

A. He is a small man.

Q. As big as you are?

A. A little smaller.

Q. How tall are you?

A. Five eight or nine. [165]

Q. You think he is how much smaller than yourself? A. Two or three inches.

Q. You say that this car was a gray car?

A. Yes.

Q. Do you know the difference between blue and gray? A. Yes.

(Testimony of Frank J. Sanford.)

Q. And it wasn't blue, is that right?

A. No.

Q. And you rode in this Dodge car on October the 1st or 2nd, is that right?

A. Neither.

Q. What date?

A. I imagine it would be the 8th.

Q. 8th of October? A. (No answer.)

Q. What time of the day?

A. Oh, around five.

Q. In the evening? A. In the evening.

Q. You were with him but a very few moments, is that right?

A. Well, I was with him about—I had a date with him at two o'clock in the afternoon, but I made him wait, so I didn't get there until about three, and then I took him to, I told—I took him to Ord and Broadway and to this place [166] I met him on College and Broadway, North Broadway, at five and from there I was with him about 20 minutes and then I left him and met him at Second and Fremont and then I rode with him to Sixth and Hill.

Mrs. Root: That is all.

Mr. Mandel: Just one question.

Redirect Examination

By Mr. Mandel:

Q. This picture that was shown to you by counsel for the Government, you pointed out to the extreme right Mr. Santana, is that right?

A. Yes.

(Testimony of Frank J. Sanford.)

Q. And you pointed out which gentleman as Alfonso or Albert Gonzalez, which one of the three?

A. This one here.

Q. The one at the extreme left? A. Yes.

Q. I take it from your testimony that Alfonso Gonzalez you saw sometime prior to October 8th of 1945, is that correct? A. Yes.

Q. That was not the occasion when you saw Luis, is that right?

A. I saw them together.

Q. You did see them together? [167]

A. Yes.

Q. You saw Luis and Alfonso together?

A. (No answer.)

Q. And Santana. However, you never saw him prior to the time that you met him in jail?

A. That is right.

Mr. Mandel: That is all.

Recross Examination

By Mrs. Root:

Q. You mean you saw Alfonso Gonzalez and Luis on October 8th together?

A. No, he said prior to October 8th.

Q. How much prior?

A. Well, I wouldn't know. Between the 1st and the 8th.

Q. Where were you when you saw Alfonso Gonzalez?

A. I was on Temple Street between Hill and Olive.

(Testimony of Frank J. Sanford.)

Q. Were you walking or in a car or just what?

A. I know they brought Luis—a friend of mine that Luis went to see brought him over to me. I stepped back into a parking lot where I would be in the shadow and they would be in the light. I was about from here to here from them.

Q. That was the only time that you saw Mr. Gonzalez? A. That is right. [168]

Q. Alfonso Gonzalez? A. That is right.

Q. By the Court: Were you passing any opium at that time?

The Witness: No, I was just looking at them—hearing their story.

The Court: What were you looking at?

The Witness: I was listening to the proposition.

The Court: Whose proposition?

The Witness: Luis.

The Court: And this Gonzalez was also present?

The Witness: That is right.

Q. By Mr. Binns: If I say the name “Villalva” does that recall to you Luis’ last name?

A. I am not quite sure. I have a card of his.

Q. Well, does Villalva sound like it?

A. I couldn’t say.

Mr. Binns: No further questions.

Redirect Examination

By Mr. Mandel:

Q. You saw Alfonso sometime in the early part of October, did you not? A. Yes.

Q. And Luis you saw subsequently?

(Testimony of Frank J. Sanford.)

A. I saw him after that. [169]

Q. That was about a day before you say that you saw this notice in the paper?

A. No, that was the last time I saw him.

Q. In other words, you saw Alfonso before that? [mean Luis you saw on two occasions?

A. How is that?

Q. You saw Luis on more than on occasion?

A. Yes.

Mr. Mandel: That is all.

The Court: You say you saw him about the 8th. Did you see him on the 7th, the day before the last time you saw him?

The Witness: No, I don't think so.

The Court: You did not see him every day?

The Witness: No, not every day.

The Court: That is all.

We will take our evening recess at this time. The jury will bear in mind the admonition the court has heretofore given. At this time we will recess until 9:30 o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p.m. a recess was had until 9:30 o'clock a.m., Thursday, February 21, 1946.) [170]

Los Angeles, California,

Thursday, February 21, 1946, 9:30 a.m.

The Court: Will you stipulate the jurors are present and in the jury box and the defendants are present in court with their counsel?

Mr. Mandel: So stipulated.

Mrs. Root: Yes, your Honor.

Mr. Binns: So stipulated.

The Court: Let the record so show. You may proceed.

Mr. Mandel: As far as the defendant Santana is concerned, we are resting.

Mrs. Root: Mr. Alfonso Gonzalez, will you take the stand, please?

ALFONSO GONZALEZ,

called as a witness by and on behalf of the defendant Gonzalez, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Alfonso Gonzalez.

Direct Examination

By Mrs. Root:

Q. Will you state your name?

A. Alfonzo Gonzalez.

Q. Mr. Gonzalez, you are the husband of Josephine Gonzalez, one of the defendants in this action?

A. Yes.

(Testimony of Alfonso Gonzalez.)

Q. And calling your attention to the first part of October, did you go to San Francisco?

A. In the first part of October?

Q. First part of September, 1945?

A. Yes.

Q. And whom did you go with, please?

A. I stay on my ranch when Mr. Santana come up there and ask me to come with him to Los Angeles and buy some truck. He say if I help him to buy a truck he give me some commission.

Q. You had been in some previous transactions in the selling of trucks to Mr. Santana?

A. Yes; I sell him one truck before.

Q. Mr. Gonzalez, you live where, please?

A. I live in Westmoreland, California.

Q. Is that in the Imperial Valley?

A. Yes.

Q. And is that on a ranch?

A. Ranch.

Q. And Mrs. Gonzalez lives with you?

A. Yes.

Q. Now, you went to San Francisco with Mr. Santana?

A. No; I come from Westmoreland to Los Angeles.

Q. I see, but ultimately the three of you arrived in [174] San Francisco?

A. Well, he come to Los Angeles and that time we come here everything closed here—some kind of holiday or something and no can buy truck here and then I talk to my wife and she say, and I go see

100
(Testimony of Alfonso Gonzalez.)

his brother-in-law—I mean my brother-in-law up there in San Francisco and I tell my wife I don't know if I can do because——

Q. Don't tell us about a conversation. You did get to San Francisco, is that right?

A. Yes.

Q. And Mr. Santana and Mrs. Gonzalez, the three of you were in San Francisco, is that correct?

A. Yes.

Q. All right. Now, did Mr. Santana purchase an automobile in San Francisco? A. Yes.

Q. And from whom did he purchase an automobile? A. My brother.

Q. And what is your brother's name?

A. Jose Gonzalez.

Q. When did he purchase it?

A. Well, I think he purchased it around the 15th or 17th of September.

Q. And when did you leave San Francisco?

A. The 3rd of October, around three o'clock in the [175] afternoon.

Q. Had Mrs. Gonzalez, the defendant in this action, left before you?

A. Oh, yes, she left, I think, on the 17th of September or 18th or something like that.

Q. Had you in the meantime heard of her having an accident? A. Yes.

Q. And was that your purpose in leaving San Francisco? A. What?

Q. Is that why you left San Francisco?

(Testimony of Alfonso Gonzalez.)

A. When she come to—I know she is in the hospital.

Q. Yes?

A. I tried to come back to Los Angeles and I telephone her to the hospital and she told me she is not serious and say that if I have got something to do up there I can stay.

Q. But you left on October 3rd, is that right?

A. Yes.

Q. From San Francisco? A. Yes.

Q. And whom did you leave with?

A. Mr. Santana.

Q. And how did you come down?

A. In his car.

Q. In which car? [176]

A. In the Dodge car he buy from my brother.

Q. The Dodge that he bought from your brother?

A. Yes.

Q. And when you arrived in Los Angeles where did you and Mr. Santana stay?

A. We come and stop over there in the trailer and I see the trailer is empty and I find, not from my wife, she say she is over there at my sister's place and I go to my sister-in-law and she say, my wife she is in the picture show pretty close to the house, and I talk to my wife and ask is she ready to go and she say the next day, and the children in school here and going to take next day and bring them over there to the Imperial Valley.

Q. Now, at that time did you and your wife leave for your home in Brawley? A. What?

100 (Testimony of Alfonso Gonzalez.)

Q. Did you and your wife leave for your home in Westmoreland?

A. We leave for Westmoreland at October 5th.

Q. On the 5th of October? A. October.

Q. Was your wife staying at her sister's between the 3rd and the 5th of October?

A. Yes.

Q. And you left Los Angeles on the 5th day of October. In what, please—what kind of car?

A. In the Plymouth car.

Q. And was that a car that belonged to Mr. Santana? A. Yes.

Q. Who left with you?

A. My wife and children.

Q. When did you come from Westmoreland to Los Angeles after the 5th of October?

A. Oh, I come sometime in November.

Q. Did you at any time—withdraw that. You saw the last witness that was on the stand last night by the name of Sanford?

A. I never see that guy.

Q. But you saw him here last night?

A. Yes.

Q. Didn't you? A. Yes.

Q. I call your attention to that gentleman, Mr. Sanford, and ask you if you have ever seen him before? A. No.

Q. Did you with one Luis meet him in an auto park any time between the 1st day of October and the 8th day of October, 1945, in the City of Los Angeles? A. No.

(Testimony of Alfonso Gonzalez.)

Q. And I call your attention more particularly to the [178] 8th day of October. Did you see him at that time? A. No.

Q. Now, I call your attention to the suitcase marked in evidence by the Government and ask you if you know whose suitcase that is?

A. Yes; it is my wife's suitcase.

Q. And when did you see it in regard to the 1st day of October? A. What?

Q. Withdraw the question.

When did you last see the suitcase?

A. Last time?

Q. Yes. A. In the house trailer.

Q. And where in the house trailer?

A. The day we leave for Imperial Valley.

Q. That was the 5th day of October?

A. Yes, the 5th in the afternoon.

Q. Did you note as to what was in the suitcase at that time? A. Yes.

Q. What?

A. She has—you know when Mr. Santana and I come in his car he got flat tire and the jack, his jack is no good, it is broke. When he loan the car to go back to the [179] Imperial Valley I remark about the jack and my wife say "I got the jack from the other car; I got the tools" and I tell her "Well, you give me the jack and pliers", I say, because "in case we might get some accident, because the tires not so good on the Plymouth car," and then we stop in the trailer and my wife took the suitcase out pretty close to the door of the trailer

(Testimony of Alfonso Gonzalez.)

and open up and give me the jack and the tools and wrap them in newspapers and I took it and put it in the Plymouth car.

Q. You took the jack out of the suitcase and put it into the Plymouth car? A. Yes, sir.

Q. And when again after that did you see the suitcase that is marked in evidence?

A. I don't see it until I see it here.

Q. You saw it here in the courtroom, that was the next time? A. Yes.

Q. Now, as to the keys on a key ring, did you note them in the courtroom?

A. (No answer.)

Q. I now hold in my hand keys, Government's Exhibit No. 3, and a container. Have you ever seen those before? A. Yes.

Q. Where did you see them? [180]

A. In the trailer.

Q. When?

A. My wife she leave the keys in the trailer.

Q. Did you not come back from Westmoreland with your wife after you had arrived there?

A. No; I stayed there.

Q. Do you know a Luis or Luis Gonzalez?

A. No.

Q. Did you at any time introduce Luis Gonzalez or a Luis to Mr. Sanford or vice versa?

A. No.

Q. Did you ever introduce a Luis to Mr. Santana, the other defendant in this action?

A. No.

(Testimony of Alfonso Gonzalez.)

Q. Did you ever see a Luis or a Luis Gonzalez or any man whose name, either the first name or the last name, was Luis to Mr. Santana? A. No.

Mrs. Root: That is all. You may take the witness.

Cross Examination

By Mr. Binns:

Q. Do you know Luis Villalva? A. Yes.

Q. Who is that?

A. My brother-in-law. [181]

Q. You say your wife was living at your sister-in-law's house. Is that Luis Villalva's wife's house?

A. No, my sister-in-law.

Q. That is another sister-in-law?

A. Yes, another sister-in-law.

Q. Did you ever introduce Luis Villalva to Mr. Santana? A. No.

Q. Where does Luis Villalva live?

A. He is living in Maple, 3731 Maple.

Q. In Los Angeles?

A. Yes, Los Angeles.

Q. How long have you known Mr. Santana?

A. Oh, I know him on December, 1944.

Q. You have known him since December of 1944?

A. Yes.

Q. That is the first time you met him?

A. Yes, sir.

Q. Where did you meet him then?

A. He go to my ranch, the ranch seven miles from Westmoreland. That time they go out and

(Testimony of Alfonso Gonzalez.)

ask me for a tractor. He say some fellow tell him I sell tractors.

Q. How often did you see Mr. Santana in 1945?

A. Well, I see him sometimes, maybe six or seven times or something like that. [182]

Q. Do you know if he came across the border each of those six or seven times you saw him?

A. Oh, yes.

Q. Where is Brawley in relation to Westmoreland?

A. That is seven miles from Westmoreland.

Mr. Binns: No further questions.

Mr. Mandel: I would like to ask a few questions.

Cross Examination

By Mr. Mandel:

Q. In September, the early part of September, 1945, you saw Mr. Santana, didn't you, in Imperial, according to your testimony? A. When?

Q. The early part of September, 1945, you saw Mr. Santana in Brawley?

A. The first time in September.

Q. I am speaking about September, 1945. You saw Mr. Santana, did you? A. Yes, sir.

Q. You saw him in Brawley with reference to the purchase of an automobile, is that correct?

A. No, sir.

Q. What was the conversation—what did he see you about?

A. Nothing at all. He come to my place and he say I [183] come with him to Los Angeles to buy a truck.

(Testimony of Alfonso Gonzalez.)

Q. That is what I am saying, an automobile or a truck.

The Court: There is a difference between a truck and an automobile, counsel.

Q. By Mr. Mandel: All right, he came to buy a truck, is that right? A. Yes, sir.

Q. Did you tell him at that time your brother-in-law had a Dodge car?

A. No, sir; I never mentioned—I not even know if my brother got a car or any kind of a car.

Q. Didn't he tell you he was interested in an automobile? A. No, sir.

Q. What were his transactions that you had with him? A. Well, farm implements.

Q. Farm implements? A. Yes.

Q. It was confined solely to farming implements, your conversation and transaction with him, is that correct? A. Yes, sir.

Q. Did you ever at any time converse with him about anything else other than that subject?

A. No.

Q. And on occasions he purchased from you or through you certain farming implements, is that correct? [184] A. Yes, sir.

Q. Caterpillar tractor or truck, is that correct?

A. Yes, sir.

Q. You introduced him to the Chief of Police at Calxico from whom he purchased a car?

A. No, never.

Q. Calipatria? A. Calipatria, yes.

Q. In one of the Valley towns he bought a

(Testimony of Alfonso Gonzalez.)

Caterpillar through your introduction, is that correct? A. Yes, sir.

Q. And there were about three transactions he had that way, is that true? A. Two.

Q. All right. Two. You saw him, you say, some six or seven times, is that right? A. Yes, sir.

Q. You first saw him in December of 1944?

A. Yes, sir.

Q. And did you go over the border to see him?

A. No; he come to my place.

Q. You never did see him in Mexicala where he lives? A. Oh, yes.

Q. Then you saw him there as well as—you alternated— [185] sometimes he came to Brawley or Westmoreland and you in turn came to Mexicala to his ranch, is that correct? A. Yes.

Q. He had quite an area under cultivation, is that true? A. Who?

Q. Mr. Santana. A. I don't know that.

Q. You never saw his ranch? A. No.

Q. Didn't you know what business he was in?

A. I hear he got a ranch and buy implements.

Q. Didn't you ever see his place? A. No.

Q. You didn't know he was growing cotton?

A. No.

Q. Where did you see him in Mexicala?

A. What did I see?

Q. Where did you see him?

A. His house.

Q. You never saw him at his place of business?

A. No.

(Testimony of Alfonso Gonzalez.)

Q. Was he dressed as a rancher or in ordinary dress clothes when you saw him?

A. The same clothes he has got. [186]

Q. He wasn't working at the time you saw him?

A. No. All the time I see him in the city.

Q. You mean Mexicala? A. Yes.

Q. You don't know where his ranch is?

A. No.

Q. Now then, do you know his wife, Mrs. Santana? A. Yes.

Q. You have seen her? A. Yes.

Q. Prior to the time of this case?

A. No. Sometime I look for Santana over there and I talk to his wife for him. She say he is around town.

Q. When he saw you at Brawley he asked you for the purchase of a truck, is that right?

A. I never see him in Brawley. I see him in Westmoreland.

Q. Westmoreland? A. Yes.

Q. How far is that from Brawley?

A. Seven miles.

The Court: Don't ask that question again, counsel. It has been asked and answered twice.

Mr. Mandel: I am not familiar with those cities.

Q. In Westmoreland you met him sometime in the early [187] part of September, 1945?

A. Yes, sir.

Q. And at that time he asked you if you could furnish him with a truck, is that correct?

(Testimony of Alfonso Gonzalez.)

A. No. He is going to ask me to come with him to buy a truck here in Los Angeles.

The Court: Why would he need you to help him buy a truck?

The Witness: Because we made the transaction before and he think I can get it for him in better shape or something, you know, and give me a commission like they do on the tractors and my own truck before, I sell it to him too.

Q. By Mr. Mandel: Then you accompanied him? You went in a car to Los Angeles with him, is that right? A. Yes.

Q. Did you tell him at first before you started out on your trip that you would go in your truck to Los Angeles?

A. I got no truck; he has my truck. I sell it to him.

Q. I am asking you did he ask you that question—what did you tell him? That you would go in your truck to Los Angeles with him?

A. How can I tell him that? I got no truck.

Q. You can answer the question yes or no.

A. No.

Q. Your truck at that time was being repaired, was it? [188]

A. No, it is in his possession.

Q. What is that? A. He has got it.

Q. I am asking you at the time, in September, 1945, when you had this conversation in Westmoreland, was your truck at that time being repaired?

A. He has got it.

Q. You are not answering the question.

(Testimony of Alfonso Gonzalez.)

The Court: He has answered the question. He told you he didn't have a truck; that he sold it to Santana. Is that correct?

The Witness: Yes, didn't have a truck.

Mr. Mandel: That was a truck long before this transaction. That was in the early part of the year.

The Witness: That was the only truck I have got.

Q. By Mr. Mandel: We are not speaking of January, 1945. I am speaking of September, 1945. Did you or did you not tell him you were going in your truck to Los Angeles? A. No, sir.

Q. All right, you have answered it now. Then you went with him in his Plymouth car to Los Angeles, is that right? A. Yes, sir.

Q. And your wife was at that time in Los Angeles, is that right? A. Yes, sir. [189]

Q. And when you came to Los Angeles you went to the trailer that you and your wife had occupied?

A. Yes, sir.

Q. And that was in Alhambra?

A. No—I don't know what the town is. Around four miles from here.

Q. That was not the one that was in Alhambra?

A. I think so. I don't know the name, but it is four miles from here on the road.

Q. How long did you remain in Los Angeles?

A. That time?

Q. Yes. A. Just only one night.

Q. What happened with Mr. Santana's Plymouth? A. What about it?

(Testimony of Alfonso Gonzalez.)

Q. What did he do with his Plymouth car?

A. He say he is going in his car on the road. He follow us, you know, to the other side of San Fernando some place. There he says his car got bad tires and use too much oil, and say he would like to go with us. I say that that is all right. So——

Q. So that the car was left in San Fernando?

A. Yes, sir.

Q. By Mr. Santana? A. Yes, sir. [190]

Q. And you and your wife and Mr. Santana then proceeded on to San Francisco from San Fernando, is that correct? A. Yes, sir.

Q. Now, to make sure that you understand me, all of you together left for San Francisco from San Fernando in your car, is that correct?

A. Yes, sir.

Q. And that was a Chevrolet car, was it not?

A. Sir?

Q. Chevrolet? A. That is my car.

Q. The Plymouth car remained in San Fernando during that trip? A. Yes, sir.

Q. You arrived in San Francisco then, and where did you go when you went to San Francisco?

A. To my brother-in-law's.

Q. Immediately, is that correct? A. Sir?

Q. Pretty quick, as soon as you arrived in San Francisco you looked for your brother-in-law?

A. We stopped there and Mr. Santana give an address for my brother and we go to my brother-in-law's house.

(Testimony of Alfonso Gonzalez.)

Q. You gave Mr. Santana the address of your brother, is that what you are trying to say? [191]

A. Yes, sir.

Q. Mr. Santana did not know your brother before this, did he? A. No, sir.

Q. All right. You gave him the address of your brother. Why? What was the reason?

A. Because I have to see him up there.

Q. Why did you tell Mr. Santana to see your brother? Why did Mr. Santana want to see your brother?

A. Because he say maybe he don't find room and I tell him I can take him up there because I don't know my brother-in-law and I give you the address for my brother and maybe he let you live there after I see you.

Q. What else was said besides that?

A. I don't know if he go up there or go to the hotel. I don't know. I met Mr. Santana—I met him over there at my brother's place.

Q. Was that the total conversation that you had? Are you giving us all the conversation?

A. Sir?

Q. Is that all that transpired as far as conversations are concerned? A. Yes, sir.

Q. Your brother had a Dodge car, is that correct? A. Yes, sir. [192]

Q. You knew that your brother was trying to sell that Dodge car?

A. No, I don't know that.

(Testimony of Alfonso Gonzalez.)

Q. You didn't know that? A. No, sir.

Q. You gave Mr. Santana your brother's address for him to go there? A. Yes, sir.

Q. As you say it was for one purpose, for the purpose of remaining there in San Francisco?

A. Well, I tell him in case he don't find a room maybe my brother let him stay there in that case. "I see you the next day up there."

Q. Did you see him the next day?

A. Yes, sir.

Q. What happened the next day when you were there?

A. When I go up there he is over there at my brother's place.

Q. What took place there?

A. That is a tailor shop over there.

Q. I don't care about the tailor shop. What did he do? A. He sit down over there and talk.

Q. Please, Mr. Gonzalez, what did he do? What did Mr. Santana do with reference to Mr. Gonzalez? Did they have a transaction? [193]

A. No. He is only over there talking, friends, that is all.

Q. Did you see the Dodge car?

A. No. My brother got the car in the garage.

Q. You didn't see the car at all?

A. At that time I didn't see the car.

Q. Wasn't there a sale of the Dodge automobile at that time? A. No, sir.

Q. When was the car bought by Mr. Santana from your brother?

(Testimony of Alfonso Gonzalez.)

A. On the 15th or 17th of September.

Q. When did you arrive in San Francisco?

A. Who?

Q. You with your wife and Mr. Santana?

A. My wife got my car over there at his place.

The Court: What date in September did you arrive, do you know?

The Witness: (No answer.)

The Court: When did you arrive in San Francisco?

The Witness: When I stay there.

The Court: When you went to San Francisco?

The Witness: Yes, sir.

The Court: What day did you arrive? What was the date that you arrived in San Francisco?

The Witness: The day?

The Court: Yes, the day you arrived in San Francisco?

The Witness: I don't know, but I think the first part of September.

The Court: How long was it after you arrived that Santana and your brother made a deal for the Dodge car?

The Witness: Oh, around ten days, or 12 days. Something like that.

Q. By Mr. Mandel: When did you arrive from Westmoreland in Los Angeles?

A. I think in the first part of September.

Q. What do you mean "first part"? When did you leave Westmoreland in Imperial Valley?

(Testimony of Alfonso Gonzalez.)

A. I don't recall exactly but I think the first to the 5th, or something like that.

Q. 5th or 6th of September?

A. No, the 1st or the 5th—between that time. I don't remember the day.

Q. You say either the 1st or the 5th. It could have been the 1st, 2nd, 3rd, 4th or 5th?

The Court: I think he is trying to tell you between the 1st and the 5th.

Mr. Mandel: That is what I thought.

The Witness: Yes, sir.

Q. By Mr. Mandel: In other words, it would be just [195] as exact to say the 5th or 4th as the 1st, is that correct? A. Yes, sir.

Q. All right. Assuming it was the 5th of September, it took you a day at least to come to Los Angeles, is that right?

A. We come—we leave Westmoreland around 12 or 1 o'clock in the afternoon.

Q. When did you arrive in Los Angeles?

A. Around six o'clock.

Q. The same day? A. Same day, yes.

Q. Let us assume it was the 5th of September that you arrived in Los Angeles? A. Yes, sir.

Q. And you stayed in Los Angeles how long?

A. That night.

Q. That would take you to the 6th of September, is that right?

A. I don't remember the date.

Q. Well, I appreciate that fact, but if it was the 5th of September when you left the Valley, you

(Testimony of Alfonso Gonzalez.)

arrived in Los Angeles the same night. You remained one night, according to your testimony, in Los Angeles? A. Yes, sir.

Q. That would take you to the 6th of September? [196] A. I don't know the date.

Q. Approximately?

Mr. Binns: Your Honor, I think counsel is trying to argue with the witness. It is apparent to everybody about the date.

Mr. Mandel: This is my purpose: He says the man bought the car 10 or 12 days after he arrived in San Francisco. The testimony is that he bought the car on the 15th of September and he held the car—he couldn't take possession of the car because the man had some trouble with it.

The Court: But you are trying to pin this witness down as to a certain date when he left Imperial Valley and he will not commit himself. All he tells you is that he left between the 1st and 5th. You want to assume it was the 5th as the date he arrived in Los Angeles and that he left the next day for San Francisco and assume it took him two days to go to San Francisco which would place him there on the 8th, and then he said about ten days afterwards. But if he left on the 1st his statement would fit in with it. He says about ten days after he arrived up there. He is not telling you it was ten days or nine and a half days or ten and a half days.

Q. By Mr. Mandel: Couldn't it have been on

(Testimony of Alfonso Gonzalez.)

the 10th of September when you arrived in San Francisco? [197] A. Sir?

Q. Couldn't it have been the 10th of September when you arrived in San Francisco?

Mrs. Root: Just a minute. I object to that on the ground that it is argumentative.

The Court: Yes, it is.

Q. By Mr. Mandel: You don't know exactly when you arrived in San Francisco?

The Court: That has been asked and answered, counsel.

Q. By Mr. Mandel: Now, did you see the Dodge car in San Francisco? A. Yes.

Q. When did you see it?

A. A lot of times.

Q. When did you see it the first time?

A. I think two or three days after we stay there.

Q. And that was in the garage or in the possession of your brother?

A. No. My brother took it from the garage and stop in front of the place because he have to go and get clothes for the cleaner.

Q. And Santana was staying there at that time?

A. Sometimes go up there.

Q. Where was he staying if he wasn't staying there? A. I don't know. [198]

Q. You don't know? A. No.

Q. Did he have people in San Francisco?

A. Sir?

Q. Did he have any people in San Francisco?

A. Who?

(Testimony of Alfonso Gonzalez.)

Q. Santana? A. I don't know.

Q. You did have people, though, in San Francisco, didn't you? A. Yes.

Q. You were taking him to your place in San Francisco?

A. No, I don't take him over to my people.

The Court: What did you go to San Francisco for?

The Witness: I go to see my brother-in-law—take my wife to see her brother.

The Court: What did you take Santana for?

The Witness: He said he wanted to go. He stop and see somebody that owe him money. We stop in Fresno.

Q. By Mr. Mandel: Does he have a mother in San Francisco?

A. No, I don't say that. He say he is going to stop in Fresno to see a fellow that owe him money.

Q. Fresno? A. Yes. [199]

Q. Did you stop in Fresno?

A. Yes, we stop in Fresno.

Q. How long did you stop in Fresno?

A. Well, we eat over there and we go to some ranch. You ask him.

Q. I am asking you. How long did you stay in Fresno? A. We leave the same day.

Q. You just stayed there enough to eat and go on your way?

A. We stop there to eat and then we took him looking for that fellow. He say he owe him money and he go to some ranch up there.

(Testimony of Alfonso Gonzalez.)

Q. How long did you remain there?

A. Well, maybe an hour or two or something like that.

Q. Then you went on to San Francisco from there?

A. He say he want to go too, because he got a brother some place up there.

Q. Wasn't it the general idea you were all to go to San Francisco when you left Los Angeles?

A. To see Josephine's brother-in-law.

Q. When you were in San Francisco when was it that you learned that Mr. Santana had purchased your brother's car?

A. You mean when I find out Santana buy the car?

Q. That is what I asked you.

A. That is what I want to know. He told me but I [200] don't remember when.

Q. You mean Santana told you? A. Yes.

Q. You saw the car in his possession, didn't you?

A. Yes, he has the car.

Q. When did he get it?

A. I don't know. He got it different times.

Q. Did you know that your brother had sold the car to Mr. Santana? A. Yes, sir.

Q. How much had he sold it for?

A. I don't know.

Q. You don't even know that? A. No.

Q. Your brother did not tell you that?

A. Well, you know my brother doesn't answer the question because—he don't tell me.

(Testimony of Alfonso Gonzalez.)

Q. Did you see the car—I mean, did you see whether or not the car had some tires?

A. What?

Q. That needed recapping, the tires of the Dodge car?

A. I don't know.

Q. Did you see that?

A. I don't know.

Q. You did not notice the condition of the car? [201]

A. I don't know.

Q. That was a 1941 Dodge, was it not? Gray?

A. Blue, light blue.

Q. In other words, "Pluma" in Spanish?

A. Blue.

Q. A blue car?

A. Yes, kind of blue.

Q. This car was a gray car, wasn't it?

Mrs. Root: No, it wasn't. Look at your registration slip.

Q. By Mr. Mandel: This was a Dodge 1941?

A. Yes, sir.

Q. Blue—I mean gray—a gray-tone color?

A. What did you say?

Q. Gray?

A. No, blue car.

Q. Blue?

A. Yes.

Q. Now, was it that your brother—I will withdraw that. Your brother had a car that he was having repaired at that time when he had the transaction with Mr. Santana?

A. No, the car never been in the garage. Running around all the time.

Q. What is that?

A. The car, it never be in the garage. [202]

(Testimony of Alfonso Gonzalez.)

Q. No, I mean was there another car that was being used by Mr. Gonzalez, your brother-in-law?

A. No. This is the only car he got.

Q. And do you know whether or not he told Mr. Santana that he could not give him possession of the car until his other car was repaired or until he got another car?

Mrs. Root: We will object to that on the ground it is hearsay as to the defendant Gonzalez and is incompetent, irrelevant and immaterial.

Q. By Mr. Mandel: If you know.

Mrs. Root: And it is not proper cross-examination.

The Court: I don't know what difference it makes. There is no dispute about the purchase of a car up there.

Mr. Mandel: It is a question of credibility we are going into, your Honor.

The Court: Everybody admits he bought a car up there, a 1941 Dodge, and I don't know why you are arguing about it and spending so much time. The question before this jury is whether or not these people or either of them had in their possession certain narcotics or aided or abetted one of the parties in that possession.

Mr. Mandel: That is true, but I am trying to go into the question of the veracity of this witness.

The Court: You are doing everything but staying on that track, counsel. [203]

Mr. Mandel: All right.

Q. Mr. Gonzalez, you left San Francisco—with-

(Testimony of Alfonso Gonzalez.)

draw that. Before you left San Francisco your wife left the city—that is, San Francisco, with her Chevrolet car, is that correct? A. Yes.

Q. And she left alone, is that right?

A. Yes.

Q. And then thereafter she met with an accident somewhere in the inland route?

A. Yes.

Q. And was either in Newhall Hospital or some place after the wreck, is that correct?

A. Sir?

Q. She was in some hospital in the San Fernando Valley or at Newhall? A. Yes.

Q. And then you received word that she or some member of the family wanted to use the defendant Santana's Plymouth car that was in San Fernando? A. What?

Q. At that time you wanted to use Mr. Santana's Plymouth car that was in San Fernando?

A. Who want to use it?

Q. You or some member of your family? [204]

A. No. When my wife got the accident I phone her how she is and she say, well, she is not very sick. She say she is all right and in a few days be out of the hospital and then that time Mr. Santana he is in the tailor shop, because I phone from there and I tell him what my wife say and my wife say the car is completely demolished and can no use no more, and then Mr. Santana say, "Tell your wife get my car up there and use it" and he give me the keys and I sent the keys to my wife in the hospital.

150 Josephine Gonzalez et al.
(Testimony of Alfonso Gonzalez.)

Q. It was the other way around? You asked him for the keys?

A. No, no; he gave me the keys.

The Court: What difference does it make?

Q. By Mr. Mandel: Anyway, you asked him for the Plymouth car?

A. He proposed the car to me.

Q. Whether you did or he did you got the keys from him for the Plymouth car and sent them down to your wife? A. Yes.

Q. All right. And then she had the possession of the Plymouth car from there on as far as you know, is that correct? A. Yes.

Q. Did Mr. Santana at any time after that time ever have possession of that Plymouth car? [205]

A. Well, we come back. Sometimes he ride—no, no, he drive the Dodge car.

Q. The Dodge car? A. Yes, sir.

Q. From the time that your wife received these keys in San Francisco from you until the date of his arrest Mr. Santana never had possession of that Plymouth car, isn't that correct? A. Yes.

Q. I mean he never had possession of it?

A. No.

Q. Now then, you rode back to Los Angeles in the Dodge car some time around the latter part of September of last year, is that correct, September 30th or October 1st you left San Francisco?

A. We left San Francisco October 3rd.

Q. All right, October 3rd. And you arrived in

Testimony of Alfonso Gonzalez.)

Los Angeles some time either the next day or the following day or two days thereafter, is that true?

A. In what? In Santana's car you mean?

Q. Yes. A. Yes, I ride with him.

Q. And at that time you went where when you came to Los Angeles from San Francisco?

A. When we come to Los Angeles? [206]

Q. Yes. A. We go to the trailer.

Q. And that was where—where was the trailer?

A. My wife's trailer.

Q. But where? A. Right there.

Q. The one you say is about four miles away from the city? A. Yes, sir.

Q. Who was at the trailer at the time?

A. Nobody.

Q. And you found later your wife had either gone to your in-laws or your brother-in-law or somebody, a member of the family—anyway, she was staying there, is that correct? A. Yes.

Q. And then what did you do when you arrived there? A. Where?

Q. Well, where your wife was, not finding her at the trailer?

A. She was over there at my sister-in-law's.

Q. All right, at that time did Mr. Santana tell you that he wanted to deliver the Plymouth car to his wife in Mexicali? A. No.

Q. Did you have a conversation with him about the delivery of the car to his wife in Mexicali? [207]

A. No.

(Testimony of Alfonso Gonzalez.)

Q. How did you happen to take this car or your wife take the car to Mexicali or the Valley?

A. Because he ask to take the car out there.

Q. Yes, he told you to deliver the car to his wife, didn't he? A. No, he didn't say that.

Q. What did he ask you to do with the car?

A. He say to keep it there until after he go out there. He only going to stay there two or three days and then go get his car.

Q. Only going to stay in Los Angeles two or three days and then go back to his home?

A. That is what he say.

Q. That is what I am saying.

Mr. Mandel: He says yes, sir, and no, sir—"Yes, we have no bananas."

The Court: Don't argue with the witness so much. I think if you will ask your questions more directly you will get along better.

Q. By Mr. Mandell: Mr. Gonzalez, you took Mr. Santana's car and left for the Valley, is that right? He told you to take it along with you to the Valley and he would come there within two or three days afterwards, is that correct?

A. Yes. [208]

Q. And he didn't have any conversation with your wife with reference to taking the car, did he?

A. No, sir.

Q. He directed his conversation directly to you, didn't he? Gave you the keys or didn't give you the keys, but at least told you to take the car and go to the Valley?

(Testimony of Alfonso Gonzalez.)

A. He don't say nothing about it because my wife that time she got the car and we figure to go to Brawley to bring the girl to go to school. He say that we take the car.

Q. Prior to that time you went with him to some school to take your children out of school, is that right? A. Yes.

Q. He was along with you at that time in the Dodge car? A. Yes.

Q. And thereafter you told him that or, he told you that he wanted you to take the Plymouth car, which was then in the possession of your wife, and take it to the Valley?

A. He don't say nothing; no.

Q. What did he say? A. Nothing at all.

Q. Well, I thought you said he told you to go to the Valley? A. No, I don't say that.

The Court: You said he told you to take the car down to [209] the Valley.

The Witness: He got the car. He said we can have the car to bring the girl to the Valley and keep the car until he come back. That is what he say.

Q. By Mr. Mandel: Until he came back where?

A. He say he stay here two or three days and then go back.

Q. And then return to his home in the Valley, is that right? A. Yes, sir.

Q. In the meantime you were to take his Plymouth car there? A. Yes.

Q. Did he give you at that time a ring?

A. No. I got that ring long time before.

(Testimony of Alfonso Gonzalez.)

Q. I am asking you—what do you mean “before”? Do you mean Mr. Santana’s ring?

A. Yes.

Q. When did you get this ring?

A. In San Francisco.

Q. On this trip? A. On this trip.

Q. Did you have an overcoat, too?

A. He got his overcoat. He got some pants and something over in the trailer. [210]

Q. Did he give you an overcoat in San Francisco? A. No.

The Court: What did he give you the ring for?

The Witness: He got two rings and he say, “you keep that one”, and he give me the one ring to keep. He got two.

The Court: He bought two rings up there?

The Witness: I don’t know. He got two diamond rings and give me one. He said, “You keep that one” and he don’t mention about the ring to give it to nobody.

Q. (By Mr. Mandel) He told you to take the ring along with you and the car to deliver to his wife also. He gave you a note, didn’t he?

A. No, sir.

Q. His car is the Dodge car—did it need recapping or did it have some trouble with the tires?

A. No, I don’t think so. The car is here. You will find the tires.

Q. I am asking you did he have that conversation about the tires?

A. No, he didn’t say nothing about the tires.

(Testimony of Alfonso Gonzalez.)

Q. Didn't he tell you to take the ring to his wife and try to get some money from a man by the name of Saragosa in the Valley so he could recap the tires? A. No, sir.

Q. Didn't say that at all? [211]

A. No, sir.

Q. Didn't give you a note to his wife?

A. No, sir.

Q. Where were you to take the car to?

A. Sir?

Q. Where were you to take the car?

A. Where we take it?

Q. Where were you going with the Plymouth car? A. To my home.

A. And leave the car at your home?

A. Yes, sir.

Q. You were not going to take it to his wife?

A. No.

Q. Your wife did go to his wife in Mexicala, though, didn't she, with the car or went there?

A. How can she go to Mexicala that time? I got the car. She is over there in my daughter's place because she is sick that time.

Q. I am asking you, Mr. Gonzalez——

The Court: Did your wife go down to see Santana's wife at Mexicala?

The Witness: No, not that I know of.

Q. (By Mr. Mandel) You did not know that?

A. No, sir.

Q. Didn't your wife go to see her in Mexicala and tell [212] her that she was sorry she could not

(Testimony of Alfonso Gonzalez.)

bring her the car because she was ill and that she would come there the following day with the car?

Mrs. Root: Just a minute. We will object to that on the ground it is a compound question calling for two answers and is also hearsay.

The Court: Counsel has a habit of that.

Q. (By Mr. Mandel) Or did you— isn't it a matter of fact— didn't your wife go with the Plymouth car to Mrs. Santana's home in Mexicala?

A. What did you say?

The Court: Did you wife go down to Mexicala with the Plymouth car to see Santana's wife?

The Witness: I got the car on my ranch.

The Court: All the time?

The Witness: All the time. I leave my wife over there and in my son's place, and I took the car to the ranch.

Q. (By Mr. Mandel) To you knowledge she never went to Mexicala to see Mrs. Santana?

A. Not that I know of. How can she go?

Q. I am asking you. She never went there to see her?

The Court: As far as you know?

The Witness: No, I don't know.

Q. (By Mr. Mandel) Then afterwards your wife came back with the Plymouth car to Los Angeles, is that right? [213]

A. After what?

Q. I say, after that, sometime in October after the 5th or 6th, your wife left the Valley for Los Angeles again with the Plymouth car, is that correct?

A. Yes.

(Testimony of Alfonso Gonzalez.)

Q. Was that according to the instructions of Mr. Santana?

Mrs. Root: I object to that.

Q. (By Mr. Mandel) Did he tell you to do that? A. Who?

Q. Mr. Santana.

A. He don't say can do it or not. He loan us the car. That is all.

Q. Didn't he tell you the specific purpose for taking the car was to take it to his wife in Mexicala? A. No, he don't say that.

Q. And that he would be there in two or three days with his own car, is that right?

A. Yes.

Q. By the way, when you left on the 5th of October for the Valley where was the suitcase? This suitcase in evidence here? Do you see this suitcase here? A. Yes, sir.

Q. Where was that suitcase?

A. In the trailer. [214]

Q. In the trailer? A. Yes.

Q. You left for the Valley on October 5th?

A. Yes.

The Court: You did not take the suitcase with you?

The Witness: No, sir.

Q. (By Mr. Mandel) You did not take the suitcase at all? A. No.

Q. What was in the suitcase at that time?

A. Some, she—my wife open the suitcase over there and she took the tools and give it to me.

(Testimony of Alfonso Gonzalez.)

The Court: When you left the trailer there were no tools in the suitcase?

The Witness: She give me from the suitcase.

The Court: She took them out?

The Witness: Yes, sir.

The Court: And you took them with you?

The Witness: Yes, sir.

The Court: So all that was left in the suitcase was some dirty clothing?

The Witness: I think so—I think she got something over there.

Q. (By Mr. Mandel) That was on the 5th of October? A. Yes, sir. [215]

Q. And you did not see the suitcase after that?

A. No, sir.

Q. You don't know how the suitcase came into the possession of Mrs. Gonzalez, your wife, do you?

A. No.

Q. How is that? A. What you say?

Q. You never saw—you don't know how that suitcase happened to be in the possession of Mrs. Gonzalez, your wife, in the Plymouth car when she was arrested? A. No, I don't know.

Q. How is that?

A. I don't know nothing.

Q. You don't know anything about that?

A. I don't understand—what do you say?

The Court: He is asking you when you left Imperial Valley—when you went to Imperial Valley you stayed there, didn't you?

The Witness: Yes, sir.

(Testimony of Alfonso Gonzalez.)

The Court: And your wife came back to Los Angeles?

The Witness: Yes, sir.

The Court: And you wife was arrested with the suitcase in the car?

The Witness: Yes, sir.

The Court: And you don't how how the suitcase got [216] from the trailer back into the Plymouth, do you?

The Witness: No, sir.

Q. (By Mr. Mandel) Do you know Luis? You mentioned to Government counsel—he asked you if you knew Luis. I did not get his name.

Mr. Binns: Villalva.

Q. (By Mr. Mandel) Is he related to you, this Luis Villalva? A. Yes.

Q. Through your wife? A. Yes, sir.

Q. It is your wife's brother?

A. Yes, sir.

Q. Is he a short man, rather short?

A. Well, he is about, I think, around five feet and five or six inches, something like that.

Q. You saw the man Sanford testify yesterday in court? A. No, sir.

Q. You were not in the courtroom yesterday?

A. Sir?

The Court: The man that testified from the jail, did you see him?

The Witness: Yes, sir.

The Court: Here in the courtroom? [217]

The Witness: Yes, sir.

(Testimony of Alfonso Gonzalez.)

Q. (By Mr. Mandel) Did you ever see him before? A. No, sir.

Q. Never saw him in company of one of your brother-in-laws, Luis? A. No, sir.

Q. At no time? A. No, sir.

Q. This picture that you were in with Santana and some other individual, you are in this picture, in this photograph, are you not? A. Yes, sir.

Q. Well, look at it first.

A. Yes, that is me.

Q. That is you at the end, extreme left?

A. Yes, sir.

Q. Who is the other gentleman?

A. My brother.

Q. Your brother? A. Yes, sir.

Q. Is that Jose Gonzalez?

A. No, Roman Gonzalez.

Q. Was that taken here in Los Angeles or in San Francisco?

A. No, taken in San Francisco. [218]

Q. Some bar up there?

A. A restaurant there.

Q. By the way, during the entire trip from here to—from Westmoreland to Los Angeles and from Los Angeles to San Francisco and all the subsequent trips, was there ever any discussion with Mr. Santana that you had with him about anything other than what you have testified, as far as the car is concerned? A. Sir?

Q. I will try to break it down. During the entire time that you were with Santana, from the time you

(Testimony of Alfonso Gonzalez.)

left your home in Westmoreland up until the time that you went to Imperial Valley on the return trip in October, what transactions did you have with Mr. Santana? What was the purpose of his business with you?

A. He come to buy a truck.

Q. To buy a truck? A. Yes, sir.

Q. That was his sole and only reason for coming here, is that correct? A. Yes.

Mrs. Root: Wait a minute; he would not know that.

Mr. Mandel: All right.

Mrs. Root: Objected to on the ground it calls for a conclusion. [219]

The Court: That is what he testified to, that he came up here for a truck and ended up in San Francisco.

Mrs. Root: I was only thinking of the "sole and only purpose." I could not see how this gentleman could read his mind. I will withdraw the objection.

Mr. Mandel: That is all.

Q. (By Mr. Binns) How far is Mexicala from Brawley?

A. From Brawley is is around 30-some miles.

Q. How many times did you go to Mexicala in 1945? A. In 1945?

Q. Yes.

A. Oh, I think I go four or five times.

Q. Do you have to cross the border each time?

A. Yes, sir.

(Testimony of Alfonso Gonzalez.)

Q. Mexicala is in Mexico? A. Yes, sir.

Q. Did you see Santana every time you went over there? A. No, sir.

Q. How many times did you see Santana?

A. Well, I see Santana up there two times.

Q. Did you know Santana was raising opium on his ranch?

A. No, sir, I don't know nothing.

Q. After your wife gave you these tools——

Mr. Mandel: If your Honor please, we take exception to [220] that. There is no evidence upon which to base such a question.

The Court: And furthermore, I did not know that you "raised opium".

Mr. Mandel: I didn't think so either.

Q. (By Mr. Binns) After you took the tools out of the suitcase did you put them in the back of the Plymouth car? A. Yes.

Q. And that is where they were?

A. Yes, sir.

Q. And you say that because you knew that the tools in the Plymouth were not in good condition? A. Yes, sir.

Q. Now, you testified to conversations with Mr. Santana. Does he speak English? A. Yes.

Q. Did you talk to him in English?

A. He speak better than I.

Mr. Binns: That is enough.

The Court: Do you own this trailer?

The Witness: Sir?

The Court: Who does the trailer belong to?

(Testimony of Alfonso Gonzalez.)

The Witness: To my wife.

The Court: You keep it there all the time?

The Witness: Yes, sir.

The Court: So that you have a place to come to when [221] you come from the Imperial Valley up here? You always have a place to stay?

The Witness: She is on vacation. She bring the trailer on vacation, summer time. Too hot up there and doctor tell her to come.

The Court: She was renting it for the summer?

The Witness: Yes, sir.

The Court: She does not own the trailer?

The Witness: Yes, she owns the trailer.

The Court: And still owns it?

The Witness: Yes, sir.

The Court: And it is still out there?

The Witness: Yes, sir.

The Court: So that when she came from the Valley she had a place to stop?

The Witness: She is here—she never go back to the Valley.

The Court: But I know last October that was the situation?

The Witness: Oh, yes.

The Court: It is not hot in October.

The Witness: She is using the trailer because she is living over there with the sister-in-law.

The Court: But when you came up you knew you had a trailer to go to, didn't you? [222]

The Witness: Oh, yes.

(Testimony of Alfonso Gonzalez.)

The Court: And then when you left Los Angeles for San Francisco still the trailer was there?

The Witness: Yes, sir.

The Court: And it was there for you when you came back to it?

The Witness: Yes, sir.

The Court: And then when you came back your wife went to her sister-in-law's?

The Witness: Yes, sir.

The Court: And you let Santana use the trailer?

The Witness: Yes, sir.

The Court: So you have a home in Westmoreland?

The Witness: Yes, sir.

The Court: And then you have a trailer up here where you can stay?

The Witness: No, because my wife she is the only one to come here in the summer time. I stay in the Valley all the time.

The Court: I know, but she has a place she can come to any time she desires?

The Witness: Yes.

The Court: You do not rent it to anybody?

The Witness: No, sir.

The Court: It is just for her use or your use if you [223] happen to come up here?

The Witness: Yes, sir.

Mr. Mandel: I should like to ask one or two questions, if your Honor please.

Q. Mr. Santana never paid your wife any rental, did he? A. Sir?

(Testimony of Alfonso Gonzalez.)

Q. Mr. Santana did not pay your wife rent for the trailer, for the use of the trailer?

A. They give \$10.00 for it.

Q. \$10.00? A. Yes, sir.

Q. \$10.00 for what?

A. Mr. Santana he asked me—he say, “You let me stay in the trailer a few days” and I tell him that is my wife’s trailer. I tell my wife maybe don’t let him but he better talk to her when we go over to my sister-in-law to get the kid. That is what he talk about, the trailer.

Q. As a matter of fact, you got \$10.00 from him?

A. No, I don’t got it.

Q. Please, Mr. Gonzalez, I haven’t asked the question yet. If your Honor please, I was about to ask this question: You got \$10.00 from Mr. Santana for the purchase of gasoline that you were going to use with the Plymouth car in going to the Valley, isn’t that right? [224] A. No, sir.

Q. I thought you said before when the court questioned you that the trailer was not being rented to anyone? A. I don’t say that.

Q. Then I am in error.

Which is it then, that the trailer was for rent or that it was not for rent? A. No, sir.

Q. Which is it?

A. I don’t understand you.

Q. Was you wife renting the trailer or wasn’t she? A. To who?

Q. To anyone? A. No.

Q. She did not rent it to Mr. Santana either, then, is that what you mean?

(Testimony of Alfonso Gonzalez.)

A. He gave her \$10.00. He gave \$10.00 to her to let him stay there a few days. That is what he says.

Q. Who paid for the gasoline for your trip to the Valley? A. I did.

Q. You paid for the gasoline? A. Yes.

Q. He did not give you \$10.00 for the trip?

A. No, he don't give me nothing. [225]

Q. By the way, what did Mr. Santana say to you in English? You say he speaks English. How did he say it? Will you repeat the words.

A. He don't say nothing to me in English. I know he speak English.

Q. Did you ever hear him speak English? Just use the words that he used.

A. To say what?

Q. Anything. A. Well, you ask him.

Q. I am asking you what did he say in English?

A. What do you mean you are asking me?

The Court: Counsel, he cannot tell you all the words that he might have heard him use.

Q. (By Mr. Mandel) What do you remember that he said in English?

A. Well, like you say—like I say, like everybody say.

Q. What?

Q. I don't know nothing exactly what he say but I know he speak English.

Q. Well, what did he say?

A. Whatever I say—whatever you say.

Q. Give me just one thing.

(Testimony of Alfonso Gonzalez.)

A. In kind of deal he make—deal to American people and he make it better than I. [226]

Q. Will you tell me one single thing he said in English?

A. I don't want to lie to you.

Q. I don't want you to lie.

A. Well, I don't know what he say but he speak English. That is all I know. What I am going to tell you. He say something. I don't remember what word he say. He say plenty.

Mr. Mandel: That is all.

A. And you know very well he speak English.

Mr. Mandel: Your Honor, I take exception to the remark. I spoke to my client entirely in Spanish all the time.

The Court: What difference does it make?

Mr. Mandel: He says I know he speaks English, which is entirely wrong.

The Court: Counsel, if you want to take the oath and go on the witness stand you may do so, but what difference does it make, whether he speaks English or Spanish?

Mr. Mandel: That is all.

Redirect Examination

By Mrs. Root:

Q. Mr. Gonzalez, what was the last day that you rode in the Dodge car? Do you recall the date?

A. Yes. [227]

Q. When was it?

A. The 5th.

Q. Of October?

A. Of October.

(Testimony of Alfonso Gonzalez.)

Q. That is all.

The Court: What did your wife come back to Los Angeles for?

The Witness: To see the doctor.

The Court: You went down there to put the children in school?

The Witness: Yes, sir.

The Court: And as quick as you got down there your wife came back?

The Witness: No, she stay four days, I think.

The Court: Four days?

The Witness: Yes.

The Court: That is all.

Mr. Binns: No further questions.

Mrs. Root: Mrs. Macias.

HELEN MACIAS,

called as a witness by and on behalf of the defendant Gonzalez, having been first duly sworn, was examined and testified as follows: [228]

The Clerk: State your full name, please.

The Witness: Helen Macias.

Direct Examination

By Mrs. Root:

Q. Mrs. Macias, you are the sister of the defendant Josephine Gonzalez? A. I am.

Q. And you live where, please?

Testimony of Helen Macias.)

A. I live at 471 West 45th Street.

Q. Los Angeles? A. Los Angeles.

Q. And calling your attention to the first part of October and after the 20th of September of last year, did you see your sister? A. Yes.

Q. Where, please? A. At my home.

Q. And do you recall the date that she actually arrived at your home to stay with you for a few days?

A. It was on the 23rd of September.

Q. And can you describe her appearance at that time? In other words, had she been in an accident?

A. Yes. She was leaning on a cane and she was—she looked very badly.

Q. And she remained there with you until what date? [229]

A. She stayed with me until the 5th of October.

Q. At any time that your sister was there in your home did you see the suitcase that is marked as Government's Exhibit in this courtroom?

A. I did not.

Q. During the time that your sister Josephine Gonzales remained with you did you see Mr. Santana? The other defendant in this action?

A. Yes, I did.

Q. When and where?

A. On October 4th he came over to my house.

Q. Who were the persons present?

A. Mrs. Gonzales, Mr. Gonzales, Mrs. Gonzelez' grandchildren and myself.

(Testimony of Helen Macias.)

Q. And was there a conversation at that time as between Mr. Santana and Mr. and Mrs. Gonzales?

A. There was.

Q. Was it in regard to a trailer?

A. Yes.

Q. Tell us about that. What did Mr. Santana say and what did Mrs. Gonzales say?

A. Mr. Santana said that he was looking for a place to stay where it was safe because he carried large amounts of money on his person. He came to purchase cars and he wanted a safe place to stay at. My sister told him that he had her [230] trailer but she didn't rent it. He insisted on her accepting some money and letting him stay there and he presented a \$10.00 bill. She finally told him that he could stay there.

Q. Was there any period of time mentioned as to how long Mr. Santana was to stay in the trailer?

A. No.

Q. Did you see him give her the \$10.00 bill?

A. Yes, I did.

Q. After that conversation? A. Yes.

Q. Now, when your sister left your premises, your house, did she leave with Mr. Gonzalez, her husband? A. Yes.

Q. And how did she go, please?

A. They left in the Plymouth car belonging to Mr. Santana. The reason I saw that car was that day they had gone to bring the little child from school and I packed her belongings—her granddaughter, Mrs. Gonzalez' granddaughter. I packed

(Testimony of Helen Macias.)

her clothes into a little kit bag, canvas, and Mrs. Gonzalez was quite bad. She was leaning still on the cane, so I took the suitcase to the Plymouth car.

Q. Did you take the suitcase that is marked as an exhibit here? A. No.

Q. It was not her suitcase? [231]

A. There was no suitcase except the kit that I took to the car.

Q. Now, did you know of your own knowledge that Mrs. Gonzalez was under treatment of a doctor here in this community? A. I did.

Q. By the way, will you tell us whether or not Luis Villalva is a relative of yours?

A. He is a brother.

Q. Did you see him any time during October, from the 1st to the 8th? A. No, I did not.

Q. Did you see this Dodge blue car that Mr. Santana was driving at any time? A. No.

Q. Would you mind describing the appearance of Luis Villalva?

A. He is about five feet six inches and weighs about 100 pounds. He has a thin, long face.

Q. Anything about his mouth? A. No.

Q. I believe the witness used the word "hitch". I never did get it. Did you hear what the witness said in his description? A. Yes. [232]

Q. Did you know what he meant by it?

A. He mentioned there was a disfigurement in his mouth.

Q. Well, does your brother have a disfigurement about his mouth? A. He has not.

(Testimony of Helen Macias.)

Mrs. Root: That is all. You may examine, counsel.

Cross-Examination

By Mr. Binns:

Q. When was the last time you saw your brother?

A. It was in some time of last year, in Olive View Sanitarium.

Q. Can you tell us when?

A. Well, I believe it was at the time that he was staying there.

Q. When was that?

A. Well, I really don't know what date.

Q. Was that in June or July, or when was it?

A. I would not know, sir.

Q. Do you know if it was the first part of last year? A. It could have been.

Q. Could it have been in the last part of last year?

A. Well, I don't really know, because we made several visits there. We used to go there on Sundays.

The Court: You say he is in a sanitarium?

The Witness: He was in the sanitarium. [233]

Q. By Mr. Binns: Do you know if you saw your brother in October?

A. If I had seen him I would have known it, yes.

Q. But you don't know if you did or not?

A. I did not see him.

Q. You did not see him in October?

(Testimony of Helen Macias.)

A. No, sir, I did not.

Q. The last time you saw him he didn't have any itch, signs of itch on his face, did he?

A. No, sir, he never did.

Q. But you don't know for sure when you did see him last?

A. Well, I might have seen him before October.

Q. Have you seen him since this case started?

A. No, sir.

Q. Do you know where he is?

A. Well, I believe he is—his wife was at Maple Street, but they don't visit us.

Q. And you don't visit them?

A. No, we don't make visits.

Q. And you don't know where he is now?

A. No, sir, I don't.

Mr. Binns: That is all. [234]

Redirect Examination

By Mrs. Root:

Q. As to this Olive View Sanitarium, that is a sanitarium for tuberculosis patients, is it not?

A. Yes, sir.

Q. Maintained by the County of Los Angeles?

A. Yes.

Mrs. Root: That is all.

Recross-Examination

By Mr. Mandel:

Q. I would like to ask a few questions, Mrs. Macias. When your sister, Mrs. Gonzalez—she is your sister, is she? A. Yes.

(Testimony of Helen Macias.)

Q. Had this accident in the Valley, she had the valise with her, did she not?

A. I never saw the suitcase until I saw it in court.

Q. Didn't she have it in her possession?

A. No, sir.

Q. Do you know that?

A. I do not know that because I had not seen it until they brought it here in court.

Q. You have no knowledge as to whether she did or did not have the valise?

A. I know she didn't have the suitcase because she was [235] using some of my nightgowns to stay in bed at home.

Q. When was that?

A. During—from the 23rd of September to the 5th of October.

Q. Were you with her all that time?

A. Yes, I was.

Q. It was prior to the time she had the accident, prior to the 23rd of October?

A. It was prior to the 23rd of September.

Q. And you were not with her at that time?

A. No, sir, I was not.

Q. You don't know whether she had the valise at that time?

A. No, I do not know.

Q. Were you present when Mr. Gonzalez, your brother-in-law, and Mrs. Gonzalez, your sister, and Mr. Santana left for San Francisco from Los Angeles?

A. No, sir, I was not.

Q. Were they at your house? Mr. Santana and

[Testimony of Helen Macias.)

Mr. Gonzalez and Mrs. Gonzalez, were they at your house before they left for San Francisco?

A. No, sir, they were not.

Q. You did not see Mr. Santana before that?

A. No, until the 4th of October was the first time that he was introduced to me. [236]

Q. Now, you say you saw \$10.00 given to Mrs. Gonzalez? A. Yes.

Q. As a matter of fact, didn't Mr. Gonzalez receive \$10.00 for gasoline going down to the Valley?

A. No, sir; he gave the \$10.00 to Mrs. Gonzalez.

Q. You saw that transaction yourself?

A. I saw the \$10.00 go from him to Mrs. Gonzalez.

Q. All right. Now then, you heard the conversation then with Mrs. Gonzalez and Mr. Santana at that time? A. Yes, sir.

Q. Just before they departed?

A. Yes, sir.

Q. What was the conversation?

A. Well, it was that he was looking for a place to stay.

Q. I am not speaking about that—about going to Mexico?

A. That was the conversation that took place.

Q. Is that all the conversation that took place?

A. And the rental—he wanted a place to rent.

The Court: Was there any conversation about the trip back to Mexico in the Plymouth car?

The Witness: No, sir, there was nothing mentioned.

(Testimony of Helen Macias.)

The Court: In your presence?

The Witness: In my presence. [237]

The Court: You don't know what arrangement they made about the use of the Plymouth automobile?

The Witness: No, sir, I do not—oh, yes, on the use of the Plymouth she mentioned if she could borrow the car because there was a Greyhound strike and there was no way for her to take the children back to school.

Q. By Mr. Mandel: What else was said about that? A. Well, I believe that was all.

Q. Did he tell her to bring the car back from the Valley?

A. No, sir, he didn't say anything about bringing the car back. He did not say anything about taking the car there either. He just loaned her the car.

Q. You did not hear him say anything about the fact that he was going to the Valley within two or three days thereafter?

A. He said he was going to purchase some cars and then he would be back, but I don't know where he came from or where he was going.

Q. When did you say he was going to purchase some cars? On October 4th or 5th?

A. On October 4th. He asked me if I owned a car and I told him no.

Q. He asked you and then he said he was going to purchase some cars at that time?

A. Yes, sir. [238]

(Testimony of Helen Macias.)

Q. And that was on October 4th, you say?

A. That is right.

Mr. Mandel: That is all.

Mrs. Root: That is all.

Q. By Mr. Binns: I might ask you, do you know Roman Gonzalez in San Francisco?

A. No, sir, I don't.

Mr. Binns: That is all.

Mrs. Root: Carmen Gallardo.

CARMEN GALLARDO

called as a witness by and on behalf of the defendant Gonzalez, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Carmen Gallardo.

The Clerk: Is it Miss or Mrs.?

The Witness: Miss.

Direct Examination

By Mrs. Root:

Q. What is your relationship to Josephine Gonzalez? A. She is my mother-in-law.

Q. Then you are Mrs. Gallardo? A. Yes.

Q. Where do you live?

A. I live in Westmoreland. [239]

Q. You live in Westmoreland, California?

A. Yes.

Q. That is in the Imperial Valley?

(Testimony of Carmen Gallardo.)

A. Yes.

Q. Now, calling your attention to October 5th, did you see Mrs. Gonzalez at Westmoreland?

A. Yes.

Q. And did she return your child to you as of October 5th? A. Yes.

Q. Did you see what belongings she had when she arrived at Westmoreland on October 5th?

A. Yes.

Q. Did she have the suitcase that is marked as Government's Exhibit? A. No.

Q. Did you see that suitcase at all on October 5th? A. No.

Q. Have you ever seen it before?

A. Yes.

Q. Where? A. Here in Los Angeles.

The Court: Did you ever see it in the possession of your mother-in-law, Mrs. Gonzales?

The Witness: Not at the time she was in Westmoreland. [240]

The Court: Did you ever see it in Westmoreland?

The Witness: No, sir.

The Court: The only time you have seen it was in Los Angeles?

The Witness: Yes, sir.

The Court: Since she got into this trouble?

The Witness: No. I saw it way before she got into this trouble.

The Court: You did?

The Witness: Yes.

(Testimony of Carmen Gallardo.)

The Court: Did you see her using it?

The Witness: Well, when she was staying there I saw it. She bought the suitcase here.

The Court: And you have seen it in the trailer?

The Witness: Yes.

A Juror: Louder.

The Court: You saw it in the trailer, did you?

The Witness: Yes, sir.

The Court: Your answer is yes?

The Witness: Yes, sir.

A Juror: I can't hear her.

The Witness: I am sorry.

The Court: I wish you would speak up.

Q. By Mrs. Root: Did you see Mrs. Gonzalez, your mother-in-law, when she left from Imperial Valley on or about [241] October 9th?

A. Yes.

Q. Did she have the suitcase marked as an exhibit in this case with her at that time?

A. No.

Mrs. Root: That is all, counsel. You may examine.

Cross-Examination

By Mr. Binns:

Q. Did you look in the car? A. Yes.

Q. Did you look in the back of the car?

A. Yes.

Q. What was the purpose of your examining the car?

A. Well, the reason I went back in the car—in

(Testimony of Carmen Gallardo.)

the back of the car was because I thought probably she had some suitcases or something like that of hers, because she was staying with me on account of she was sick, but there wasn't anything there in the back, and then I came to the front where I saw my little girl's clothes, suitcase.

Mr. Binns: No further questions.

Mrs. Root: I have one further question if I might ask it.

Redirect Examination

By Mrs. Root:

Q. Mrs. Gonzalez was ill when she returned back to Los [242] Angeles from Westmoreland?

A. Yes.

Q. Did you know her purpose in coming back up here?

A. Yes, she was coming to see the doctor.

Q. Coming to see the doctor? A. Yes.

Mrs. Root: That is all.

The Court: She could not have been very ill. It is 125 or 130 miles from here to Westmoreland, isn't it?

The Witness: Yes.

The Court: And she drove alone?

The Witness: Yes.

The Court: That is all.

Recross Examination

By Mr. Mandel:

Q. Mrs. Gallardo, did you see the suitcase—I mean—yes, you saw the suitcase on some prior occa-

(Testimony of Carmen Gallardo.)

sions in Westmoreland in the possession of your mother-in-law?

A. No, sir; I saw it here in Los Angeles.

Q. Los Angeles? Some time prior to the time of the arrest?

A. I am talking about a summer ago.

Q. What is that?

A. That was about a summer ago that I saw the suitcase here. [243]

Q. And she has always had that suitcase when you saw her? A. No.

Q. Is that right? A. Not all the time.

Q. Who else had it?

A. Well, sometimes when she was here she keeps them here because when she goes to my home she has plenty of clothes there.

Q. You say you saw the suitcase the day before your mother-in-law was apprehended?

A. No, sir.

Q. You didn't? A. No, sir.

Q. When was the last time you saw it?

A. Oh, about a summer ago.

Q. That was the last time you saw it?

A. Yes, sir.

Q. Up to the time you saw it in the courtroom you never saw it again? A. No.

Q. Prior to the 9th of October when Mrs. Gonzalez was arrested, you saw your mother-in-law when?

A. She was with me all the time.

(Testimony of Carmen Gallardo.)

Q. Were you with her when you went to Westmoreland? [244]

A. I was in Westmoreland.

Q. You were what?

A. I was in Westmoreland.

Q. You were in Westmoreland. When did you come back? A. Do you mean down here?

Q. Yes.

A. Well, since this happened I have been coming down.

Q. I didn't hear you.

A. I say, since this trouble happened I have been coming down.

Q. Then you did not see her after the 5th of October, did you?

A. Well, she was—after the 5th of October—she took my little girl on the 5th of October. She got in that night and she was there until the 9th in the morning when she left. She was with me.

Q. When did she leave, did you say?

A. She left the 9th.

Q. At what time in the morning?

A. About nine.

Q. About nine o'clock? A. Yes.

Q. You don't know where she went after that, do you?

A. She was coming to Los Angeles to see the doctor.

Q. Where did she leave from in Westmoreland? [245] A. From my house.

Q. What is the address there?

(Testimony of Carmen Gallardo.)

A. We have no address. We just got the box number.

Q. Now, did you notice a suitcase when your mother-in-law came to Westmoreland?

A. There was no suitcase.

Q. She didn't take anything for her clothes at all?

A. No; she always keeps clothes in my house.

Q. What is that?

A. She always keeps clothes in my house.

Q. But I mean, in going on this trip you say as far as you can recall she did not have a suitcase along with her?

A. No; just my daughter's.

Q. You did not pay any particular attention to what she came along with, did you?

A. Well, I went to the back of the car to see if she had any suitcases at all or anything there, but she didn't have anything, just what belonged to my daughter is what she had there.

Q. Was the back of the car locked or was it open?

A. It was open.

Q. You don't know Mr. Santana?

A. No, I don't.

Mr. Mandel: That is all.

Mrs. Root: That is all. [246]

Mr. Binns: No further questions.

Mrs. Root: Mrs. Gonzalez, please.

The Court: I think we had better take our morning recess at this time.

The jury will bear in mind the admonition the court has heretofore given.

(Short recess.)

The Court: Will you stipulate the jurors are present in the jury box and the defendants are present in court with their counsel?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: So stipulated.

The Court: Let the record so show. You may proceed.

JOSEPHINE GONZALEZ,

a defendant herein, called as a witness by and in her own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Josephine Gonzalez.

Direct Examination

By Mrs. Root:

Q. Now, Mrs. Gonzalez, it is important that we hear you, so keep your voice up so that we do not have any difficulty in hearing your testimony. [247]

A. Yes.

Q. You are a resident of where?

A. A resident of Westmoreland, California.

Q. And that is situated in the Imperial Valley?

A. Yes.

Q. And you live on what kind of a place?

A. I have a ranch about a half mile the other—northwest—north of Westmoreland.

(Testimony of Josephine Gonzalez.)

Q. And what do you raise there on the ranch?

A. Tomatoes and squash and cucumbers and banana squash.

Q. Vegetables? A. Yes.

Q. And how long have you been a resident there at Westmoreland? A. 15 years, going on 16.

Q. Do you own a trailer? A. Yes.

Q. And where is the trailer located?

A. It is located at 2722 Maple.

Q. Is that in Los Angeles? A. Yes.

Q. Los Angeles County? A. Yes.

Q. And the type and kind of trailer? Describe it.

A. It is a maroon with a cream top. It is a 1942 [248] Evanston and glider model.

Q. Well, I am particularly interested on the interior part of the trailer. Does it sleep one person or five persons, or how many?

A. Sleeps four people.

Q. Now, did you at any time rent that trailer to Mr. Santana, one of the defendants in this action?

A. I did.

Q. When and where?

A. It was on the 4th of October.

Q. And where were you when you rented the trailer to him? A. At my sister's house.

Q. And who were the persons present?

A. My husband, my sister, my grandchild and Mr. Santana.

Q. And did he pay you for the rental of that trailer? A. Yes; he gave me \$10.00.

(Testimony of Josephine Gonzalez.)

Q. What did he say to you about the rental of the trailer?

A. He wanted to rent it, but I didn't want to because——

Q. Don't tell us what he wanted to do. Tell us what he said.

A. He wanted a place where he could stay, a secure place and a nice neighborhood; that he was going to stay here for a while; he was going to purchase some trucks for his ranch and for his cotton. [249]

Q. Did he say anything about having money upon him?

A. Yes. He said he had quite a bit of money on him at all times.

Q. And at that time you rented the trailer?

A. Yes.

Q. Now, did you say anything to him about borrowing his Plymouth?

A. Yes. I asked him if I could borrow his Plymouth to take my grandchild home because she had to go home to school and he said I could.

Q. Was there anything said about delivery the Plymouth any place? A. No.

Q. Did you go to Mexicala to Mrs. Santana's home? A. No, ma'am.

Q. Did you tell Mrs. Santana anything relative to your being ill or about the return of the Plymouth? A. No, ma'am.

Q. And when you left on October 5th how long did you stay in Imperial Valley?

(Testimony of Josephine Gonzalez.)

A. I stayed in Imperial Valley from the 5th of October until the morning of the 9th of October when I come back to Los Angeles.

Q. What did you come back to Los Angeles for?

A. I was under the doctor's care. I was injured in and [250] automobile accident and I had to come back so I could make arrangements because they were going to pay for my hospital, the truck that wrecked my car was going to pay for my hospital and my doctor.

Q. And that accident was the accident that you had coming back from San Francisco on or about the 20th of September?

A. The 15th day of September at 4:30 in the morning.

Q. And that occurred where?

A. In the road at Rocky Ridge.

Q. And that was with a truck?

A. Yes, two trucks.

Q. Now, you were in the hospital sometime in between September 15th and October 5th, is that correct?

A. Yes, ma'am.

Q. Now, when you returned to Los Angeles on October 9th, where did you go, please?

A. I went direct to the trailer.

Q. And whom did you see at the trailer?

A. Well, I saw the neighbors there that have other trailers.

Q. What time did you arrive on October 9th at the trailer?

(Testimony of Josephine Gonzalez.)

A. Between two and three o'clock in the afternoon.

Q. And was Mr. Santana there? [251]

A. No, ma'am.

Q. Did you ever see Mr. Santana in a Dodge car?
A. Yes, ma'am.

Q. When was that, please?

A. That was on the 4th.

Q. Of October? A. Yes, ma'am.

Q. Where?

A. In front of my sister's house at 471 West 45th Street, Los Angeles.

Q. Did you know whose car that had been?

A. No, ma'am. He said he had recently bought it.

Q. And what car—what color was that Dodge car?
A. It is a blue sedan.

Q. Is there anything in this courtroom that gives you a color of blue that is like that blue that you saw?

A. More or less that gentleman's tie there.

The Court: Which gentleman are you referring to?

The Witness: I am talking of the juror—the blue in his tie.

Q. (By Mrs. Root) Which juror?

A. I don't know who he is. It is the one that has his finger——

Q. In the back row or front row?

A. In the front row, the lighter one—not the black [252] one, but the lighter one in between—yes, ma'am.

(Testimony of Josephine Gonzalez.)

Q. In other words, you know the difference between gray and blue, do you? A. Yes, ma'am.

Q. And it was a blue rather than a gray?

A. Yes, ma'am.

Q. Now, at any time did you ride in that Dodge car? A. No, ma'am.

Q. At any time did you place any opium and more particularly the can that is marked in evidence, wrapped in a towel or napkin?

A. No, ma'am.

Q. In that Dodge car? A. No, ma'am.

Q. Did you know that that opium was in that Dodge car? A. No, ma'am.

Q. Were you ever on the inside of that Dodge car? A. No, ma'am.

Q. Did you see the Dodge car other than in front of your sister's at any time thereafter?

A. I saw him park in the highway when we started for Imperial Valley on the 5th of October. It was not parked alongside of our trailer. It was parked on the highway and the door to the trailer was open and Mr. Santana was inside of the trailer.

Q. Did he have any of his clothes in there so far as you know?

A. Not on that particular day.

Q. I now show you Government's Exhibit 3 in evidence, and a key ring. Are these yours?

A. Yes, ma'am.

Q. And when in regard to the 9th of October did you have these keys?

A. I didn't have those keys at any time between

(Testimony of Josephine Gonzalez.)

the 5th and the 9th. They stayed in the trailer at all times.

Q. When did you put them in the trailer—these keys, Government's Exhibit 3 in evidence?

A. When I arrived in Los Angeles.

Q. And that was when, please?

A. The 20th day of July.

Q. 20th day of July? A. Yes, ma'am.

Q. And had you had those keys in your possession at any time between the 20th day of July, 1945, and October 9th? A. No, ma'am.

Q. And where did you pick up the keys from?

A. I picked them up on the afternoon of the 9th when I picked my suitcase. I put my keys in a pocketbook containing some papers that I needed for my insurance on my wrecked automobile and some soiled clothes and some cleaning that I [254] took to the cleaners.

Q. I show you Government's Exhibit, which is a suitcase marked Exhibit 2, and ask you if that is your suitcase? A. Yes.

Q. And when in regard to October 9th did you see it?

A. When I left it in the trailer. That was around the 21st or 22nd of September when I come from the hospital.

Q. And what was in the suitcase at that time, the 21st or 22nd of September, 1945, when you came from the hospital?

A. It had some soiled clothing and a skirt and a blouse and a black dress and two changes of underwear and a couple of stockings—a couple of pairs

(Testimony of Josephine Gonzalez.)

of stockings in the suitcase and it had our tools that were in our trailer. My sister-in-law took me to the Ridge and I picked up the tools and wrapped them in a newspaper and put them in my trailer in the suitcase.

Q. When was that?

A. That was about the 21st or 22nd of September.

Q. And is your sister-in-law's name Leonora M. Villalva?

A. Yes.

Q. Where do they live?

A. She lived at the time on Maple. She has left for Oakland.

Q. And she is now in Oakland? [255]

A. Yes, ma'am.

Q. And at the time you placed the tools in your suitcase did you lock it?

A. No, ma'am.

Q. I call your attention again to Government's Exhibit 3 in evidence, a key, and ask you if you maintained a key on this key ring that fits Exhibit 2 for the Government which is this suitcase?

A. Yes, ma'am.

Q. And did you at any time previous to October 9th use that key in this suitcase, more particularly from July of 1945 to October 9th?

A. No, ma'am.

Q. At the time that you left the suitcase was it locked?

A. No, ma'am.

Q. At the time that you left the suitcase in the trailer did you use the key that is on the key ring to the suitcase?

A. No, ma'am.

(Testimony of Josephine Gonzalez.)

Q. When did you take the tools from Government's Exhibit 2, which is the suitcase?

A. On the afternoon of October 5th.

Q. Who was present?

A. My husband and Mr. Santana and myself.

Q. The reason for taking the tools was what, please?

A. Because my husband said that Mr. Santana's jack was broken and the tires were pretty bad. Mr. Santana had said the tires probably would not last us on the trip and if we had any trouble we would have to change the tires.

Q. Where was Mr. Gonzalez and yourself and Mr. Santana when the jack was taken out of the suitcase?

A. In the trailer.

Q. And the suitcase was there in the trailer?

A. In the trailer.

Q. As well? A. Yes, ma'am.

Q. When you took the jack out of the suitcase what did you do with the suitcase?

A. I put the suitcase under Mr. Santana's bed. That was closer to the door. I had one bed on this side and I had made the extra bed where I have my dining room table. I had made that into a bed for Mr. Santana. I pushed it underneath open, containing some steel wrenches and jack—that jacks the wheels of the trailer to hitch it onto the car.

Q. Were those tools, all of them while they were in the suitcase, wrapped in paper?

A. Newspaper, Los Angeles paper and the Newhall paper.

(Testimony of Josephine Gonzalez.)

Q. So that at no time while the suitcase contained the [257] tools to your knowledge were the tools left without being wrapped in the suitcase?

A. Yes, ma'am.

Q. Where did you leave the keys in the trailer?

A. Right on top. There is a mantle that is over my range and they were there, and I had a pitcher and I had a jar there and a scarf and it was right there on top of the mantle at all times.

Q. I now show you Government's Exhibit 15 for identification, which is a picture of Mr. Gonzalez, Mr. Santana, and some other person. I show it to you and ask you if you last saw—where it was that you last saw the picture?

A. The last time I saw the picture was that night that Mr. Beckner took it away from me, from my pocketbook.

Q. Was it in the trailer?

A. Yes, ma'a'm, along with my other papers and—

Q. Now, when you arrived at the trailer on October 9th at about the hour of 2:30, not night time, but afternoon—I will withdraw the question. When you arrived at the trailer on October 9th, in the afternoon, at about 2:30, what else did you take out with the suitcase, if anything?

A. I took out some soiled clothing. I put it in a pillowcase and some cleaning which I took to the Monterey Park Cleaning Company, and my purse with my papers, my key ring, the pictures that were there on top of the mantle that [258] my husband

(Testimony of Josephine Gonzalez.)

had brought from San Francisco and some magazines.

Q. And where did you go from there?

A. I went to the cleaning establishment and left the cleaning there.

Q. Where did you go from there?

A. From there I drove to the drugstore and had lunch.

Q. From there where did you go?

A. Then I come back to the trailer and waited for Mr. Santana quite a bit.

Q. Then where did you go?

A. Then I stayed there and Mr. Santana at no time showed up. I finally decided that I had better go to the corner gasoline station and have the car completely serviced as to gas and oil and air and water so I could return it to Mr. Santana when he come back.

Q. Where did you go after that?

A. After that I returned to the trailer and waited a while and Mr. Santana did not show up. In the meantime when Mr. Santana rented my trailer I had asked him that if he should go—he didn't say for how long he wanted my trailer, so I said if he should at any time leave he could leave the keys with my landlady. I went from there to my landlady and asked her——

Q. Don't tell us the conversation. You went to the landlady. Then what did you do? [259]

A. Asked her if the gentleman that had my

(Testimony of Josephine Gonzalez.)

trailer rented had left my keys and she said "No," that she had not seen him.

Q. All right, then where did you go?

A. From there I come back and I sat in the car. From there I went inside of the trailer and had some newspapers and sat there for a while. Then it was getting cold. I didn't have any coat or anything like that. I went to the wardrobe and got a heavy woolen robe.

Q. And that was about what hour of the day or night on October 9th?

A. It was getting dark at the time. I don't know. Mr. Santana didn't keep any time. My clock in the trailer wasn't running and I didn't know, but it was getting dark.

Q. Now, at any time that you had taken the suitcase at about 2:30, which is marked Government's Exhibit 2, did you lock it in the back of the car? A. No, ma'am.

Q. Was your car locked at any time?

A. No, ma'am.

Q. When you went into the cleaners did you lock the car? A. No, ma'am.

Q. When you went into the drugstore did you lock it? A. No, ma'am. [260]

Q. So that at all times the clothing, the suitcase, your papers which were down in the floor portion of the back part of the car, which was in front of the back seat of the car, it was without any lock?

A. Yes, ma'am; and the windows were down.

(Testimony of Josephine Gonzalez.)

Q. Now, after you left the trailer for the last time what time was it?

A. Well, the officer said it was around nine o'clock.

Q. And that is to the best of your knowledge?

A. Yes, ma'am.

Q. And you went where?

A. From there I come to Los Angeles and from there got the route to San Fernando to go and visit my sister, to go over to my daughter's in La Canada.

Q. And then what happened?

A. When I arrived at my daughter's house in La Canada there was nobody home, so I come and sat in the back part of the car and sat there for a while. When the officer arrived I didn't know who he was. It was a car with different ones, so I got off the back and sat in the front. I didn't know who they were.

Q. What did you do when the officers first approached you?

A. They asked me whose car it was and I told them it belonged to a party that had my trailer rented in Monterey [261] Park.

Q. What else was said?

A. And they asked me if I had permission to drive it, and I said, "Yes," and they said how did they know—there was no registration in the car any time, and I told them they could very well telephone and ask Mr. Santana if I didn't have his permission to drive the car.

(Testimony of Josephine Gonzalez.)

Q. Then what happened?

A. Then they proceeded to search the car and got my clothes and my belongings and went through them. They picked the suitcase—I was sitting in the front part of the car and they opened the door and set the suitcase in the back and they asked me whose suitcase that was and I said it was mine. They tried to open it and it was locked. I told them that it was not locked. They said, "Well, it is," and Mr. Beckner asked me for the keys, if I have the keys, and I said, "Yes." I went into the extra purse that I had picked up from my trailer, opened it, and he asked me which key it was and I singled it out and gave it to him. When he opened it he said there was opium there. I said I didn't know—I did not know such a thing, if there was such a thing like that, that it belonged to Mr. Santana or Mr. Santana had put it there, because the last time I had seen my suitcase it contained the tools for my trailer.

Q. You told him that at that time? [262]

A. Yes.

Q. Isn't that correct? A. Yes.

Q. Were you asked by Mr. Beckner or any other officer when you took the suitcase, Government's Exhibit 2, from the trailer?

A. They did not tell me at what time. I told them that I had picked up my suitcase and my clothing and my soiled clothing from the trailer. They said that I couldn't have had it because I was being watched from seven o'clock on. I told them

(Testimony of Josephine Gonzalez.)

that in that case how did I happen to have my cleaning bill, a receipt for a cleaning bill of that date and he said I had not arrived in the trailer before 7:30 that evening.

Q. Did you show him the ticket for your cleaning?
A. Yes, ma'am, I did.

Q. Did you suggest to him or state to him that he could check or verify that you did leave your cleaning at the cleaning establishment at about two or three o'clock?
A. Yes, ma'am.

Q. What did he say as to that, if anything?

A. He said that he was going back to see Mr. Santana and he said, "Where can he be found?" and I said, "I am almost sure he is in the trailer; but he was not there the last time I left." [263]

Q. Did you then leave that place at La Canada and go to the trailer?

A. They put me in the car and drove me there.

Q. And when you arrived at the trailer was Mr. Santana there?

A. I did not see Mr. Santana because they kept me about, from two to three hundred feet away from the trailer, parked alongside of my landlady and an officer was with me.

Q. Now, I call your attention to the opium cans marked, which I believe are marked—I believe there are 16 in number and a jar, which the testimony has been contains some opium and ask you if you have even seen any of the cans, the contents of the containers or any portion thereof?

(Testimony of Josephine Gonzalez.)

A. I have seen it in the State court when they went there as State evidence.

Q. At any previous time?

A. No, ma'am. At the time of my arrest they did not show me them. They showed me when they found Mr. Santana's wrapped in a napkin. They come around and showed it to me but at no time did I see any of the contents of the 16 cans.

Q. So that the first time you saw the exhibit was when you were in the State court, is that correct?

A. Yes, ma'am.

Q. There was talk as between you and the officers, however, on the night of October 9th at the time of your [264] arrest and at the time that the officers opened the suitcase, that the suitcase did contain opium?

A. Yes, ma'am.

Q. Of which you made an answer how, please?

A. He said that it had 16 cans of opium and I told him it didn't have no such thing; that I at no time knew it contained opium; that the last time I had seen my suitcase was on the 5th of October when I had gone home and had left it in the trailer. At that time it contained my tools to my trailer.

Mrs. Root: Gentlemen, you may cross examine.

Cross Examination

By Mr. Binns:

Q. How long have you known Mr. Santana?

A. I have known Mr. Santana since November a year last November.

Q. How many times have you seen him since then?

(Testimony of Josephine Gonzalez.)

A. Oh, I have seen him about—well, about, less than a dozen times I should imagine, when he came to our ranch..

Q. And how many times did you go over to Mexicala to his place?

A. I went with my husband a couple of times to the bull ring in Mexicala the summer before last—not this summer.

Q. And did you see Mr. Santana there? [265]

A. Yes. My husband stopped to talk to him and I sat in the car.

Q. You say that was the summer before last?

A. No—I don't mean it that way, your Honor. I mean during the bull fight season. That is before last summer.

Q. That would be before last summer?

A. Yes, before last summer.

Q. Was it as far before as the summer before that?

A. No, sir; because I didn't know Mr. Santana then. I didn't know him until November.

Q. And did Mr. Santana go to San Francisco with you and your husband in September of last year?

A. He did.

Q. Do you remember having a conversation with Mr. Polcuch, the gentleman who sits behind me?

A. Yes, I did.

Q. Did you tell him that you had gone to San Francisco with Santana?

A. I had not.

D. Did you tell him that you had gone with Santana?

(Testimony of Josephine Gonzalez.)

A. It wasn't brought up about San Francisco at all. It was just brought up when my husband come back from San Francisco.

Q. I see. Do you remember having a conversation over in the Hall of Justice with Mr. Beckner?

A. Yes, I did.

Q. Did you tell him that you went to San Francisco with Santana? A. I did not.

Q. You say that that trip was not brought up over there either? A. No, sir.

Q. Nothing was said about that trip?

A. No, sir.

Q. I will ask you, didn't you tell Mr. Polcuch that you and your husband met Santana in San Francisco?

A. I told Mr. Polcuch that Mr. Santana had gone to San Francisco the day that I had left San Francisco. That was the 14th day of October in the afternoon.

Q. I did not understand your answer. Will you tell me again?

A. I told Mr. Polcuch that Mr. Santana had gone over to my brother's house on the 14th day of September. That was the day I left San Francisco for Los Angeles.

Q. I see. You did not tell Mr. Polcuch that Mr. Santana had gone up there with you?

A. I did not.

Q. Now then, calling your attention to Government's Exhibit No. 3, you say those are your keys?

A. They are. [267]

(Testimony of Josephine Gonzalez.)

Q. Well, will you please tell the jury for what each of those keys is?

A. This key here belongs to my front door of my ranch house. This one here belongs to the Chevrolet that was wrecked. This one here belongs to the front door of the trailer. This one here belongs to my little night bag where you keep your cosmetics.

This one here—these here belong to another large suitcase that I keep at the ranch. It is rather a kind of streamer truck, I would call it. It is not a suitcase and the suitcase is not here, but I do not recall this key. I do not recall what that key is for.

Mrs. Root: I wonder if we could have that one marked separately?

The Court: It is a small key.

The Witness: It is a key but I don't know what it is for.

Mrs. Root: Let us get the relative position of the keys on the key ring for a description. Otherwise it does not mean anything on the record.

The Court: It is in the same group as the car keys.

The Witness: It is, the car and my ranch house.

Q. (By Mr. Binns) You say at the time you gave that key container to the officers the key to the suitcase was also on there? [268]

A. It was.

Q. Now then, were you in your trailer in July of 1945? A. I was.

(Testimony of Josephine Gonzalez.)

Q. And you say at that time you left those keys there? A. Yes, I did.

Q. And did you come back to your trailer again at any other time in July?

A. I lived in it until the time we went to San Francisco.

Q. I see. And you lived in the trailer at that time? A. I did.

Q. And did I understand you to testify you never saw the keys from July until October 9th?

A. That wasn't what I said. I said that they had been in the trailer at all times since that date.

Q. From July until October 9th they had been in the trailer.

A. Yes, sir; at all times.

Q. Did you ever take them out and use them?

A. No, I did not.

Q. Where were they in the trailer?

A. They were on top of the mantle, on top of my stove.

Q. Did you ever go back to the Valley from July until October? A. I did. [269]

Q. How many times? A. Once.

Q. Did you take the keys with you?

A. No, sir, I did not.

Q. Did you say the front door key to the Valley ranch house is there?

A. I have no necessity of carrying my keys around because my husband was at home.

Q. Now then, do you know Luis Ramon Gonzalez?

(Testimony of Josephine Gonzalez.)

A. I do not. I know Ramon Gonzalez.

Q. Is his first name Luis?

A. No, it is Ramon.

Q. Do you remember having a conversation with Mr. Polcuch?

A. Yes. I told him that it was—that Ramon Gonzalez had his Christian name—his Christian name was not Luis Gonzalez—it was Ramon Gonzalez. In the Mexican custom it is the name that you are and the day that you are born—that is the name that they should go by.

Q. Was his Christian name Luis Ramon Gonzalez?

A. No, his Christian name is Ramon Gonzalez.

Q. Where does the Luis come in?

A. That is he was born in the day of San Luis Obispo.

Q. Showing you 15 for identification, I indicate this gentleman sitting in the middle. Is that Ramon Gonzalez? [270]

A. He is.

Q. Who, you say, was born on San Luis Obispo?

A. Yes.

Q. Do you know Luis Villalva? A. I do.

Q. How do you pronounce his name?

A. Villalva.

Q. Do you know where he is now?

A. I do not.

Q. Is he up in Oakland with his wife?

A. I hardly believe so.

Q. Now then, do you remember the conversation

(Testimony of Josephine Gonzalez.)

you had with Mr. Polcuch upstairs in the Hall of Justice? A. Yes, sir.

Q. Did you tell him that you and your husband, Alfonso Gonzalez, had taken the tools out of the suitcase and had placed them in the back of the Plymouth?

A. No, sir, at no time. I told him we had taken the jack and Mr. Beckner gave me a jack that I asked for, but he did not give me my jack. He gave me Mr. Santana's jack after it had been repaired.

Q. Now, do you remember going to Mr. Beckner's office and asking him for some tools?

A. Yes, I did go to Mr. Beckner's.

Q. And do you remember him taking you out to the [271] Plymouth and opening the back of it?

A. He did not.

Q. He did not take you out to the Plymouth?

A. No, sir.

Q. Do you remember asking him for your tools which were in the back of the Plymouth?

A. Yes.

Q. And do you remember him telling you that he could give you one jack because there were two there?

A. No. He said he had to ask permission first to see if I could get it—he didn't know whether it belonged to the car.

Q. Now then, what other tools did you have in that Plymouth besides the jack?

A. It was the pliers?

Q. Is that all?

(Testimony of Josephine Gonzalez.)

A. It was some pliers and it was—I don't know the name of it, but it is the one that you tighten the wheel with.

Q. Have you ever heard the name "lug wrench"?

A. No.

Q. The one you tighten the nuts on the wheel with?

A. Yes.

Q. And what else?

A. That was all. [272]

Q. And were those all tools that you had taken out of your Chevrolet?

A. Yes.

Q. And those were all tools which had been in your suitcase?

A. Not all of them.

Q. What else was in there?

A. There was some steel wrenches that my husband uses on the ranch and the jack for the wheel for the front part of the trailer that you have to raise so you can hitch it on the car.

Q. And those were still in your suitcase?

A. Yes, sir.

Q. What kind of lug wrench was this? Was that one of the ones that is shaped like a cross?

A. It was—I guess so. It was a four-way wrench.

Q. About that big (indicating)?

A. Yes.

Q. And then you say there was a jack?

A. Yes, sir.

Q. A jack about that tall?

A. About that tall (indicating).

Q. And then you——

Mrs. Root: "That tall" for the record is what, please, counsel? [273]

(Testimony of Josephine Gonzalez.)

Mr. Binns: Indicating the first time about eight inches and the second time about two feet.

Q. How long do you say it was?

A. Well, I don't know, two feet.

Q. Can you indicate with your hands?

A. About that big (indicating).

Q. Would you say it was about a foot, counsel?

Mrs. Root: I expect a little over that.

Q. (By Mr. Binns) Then you say there was another jack for the trailer?

A. It is not a jack—it is one that you raise your wheel with. They call it a jack. I don't know what you call them.

Q. You mean you use that to raise the front end of your trailer so it will attach to the bumper of your car?

A. Yes, sir.

Q. Now, will you please show us how large that is?

A. That is curved like that.

Q. You say it is about eight inches?

A. No, it is about that big.

Q. It is about two feet?

Mr. Binns: Will you stipulate it is about two feet, counsel?

Mrs. Root: That is what she so indicated.

Q. (By Mr. Binns) Then you say there were some [274] wrenches?

A. Yes.

Q. What size wrenches were they?

A. About that size.

Q. Indicating about a foot?

Mrs. Root: So stipulated.

(Testimony of Josephine Gonzalez.)

Q. By Mr. Binns: And how many of those wrenches were there?

A. There was two of them.

Q. And then you say there were some pliers?

A. Yes, sir.

Q. Now, did they have any tire irons? Do you know what a tire iron is? A. No.

Q. Were there any pieces of metal which you use to take a tire off and put on a rim?

A. No, sir.

Q. Did not see anything like that?

A. No, sir.

Q. Were there any other tools that you can remember?

A. Well, there was a hammer—a hammer and a screwdriver.

Q. Was there anything else?

A. And the jack for the trailer, and they want to raise the hitch on the trailer. [275]

Q. There was another trailer jack besides the one that raised the hitch, is that it?

A. Yes, sir.

Q. That was for a flat tire on the trailer, is that it? A. Yes, sir.

Q. How big was that jack?

A. That is the one I was telling you about. It was about that big.

Q. Now then, was there a jack that you had also taken out of your Chevrolet?

A. No. I left the tools—the tools that belonged

(Testimony of Josephine Gonzalez.)

to the Chevrolet I left them in the Chevrolet because the company was going to pay me for it.

Q. You didn't take all the tools out of the Chevrolet then?

A. No, not the ones that belong in the Chevrolet—just the ones that belonged to the trailer.

Q. Can you think of any other tools you had in that suitcase?

A. I didn't have but the jack—I took it out and the pair of pliers from the suitcase. That is all—that is the extent that I took from the suitcase.

Q. And you say you wrapped all those in a newspaper?

A. In the Examiner and the Newhall paper that I had [276] bought while I was in the hospital.

Q. And you wrapped them all in one bundle?

A. Yes.

Q. And then you put them in there?

A. Yes; just folded them up so they wouldn't get my suitcase soiled.

Q. And then when you and your husband opened it to take these tools out you opened the bundle?

A. I just removed the paper to one side and took out one jack and one pair of pliers and that was all.

Q. Then what did you do about the bundle?

A. I just pushed the suitcase and put it under Mr. Santana's bed.

The Court: Opened or closed?

The Witness: Closed.

Q. By Mr. Binns: Calling your attention to

(Testimony of Josephine Gonzalez.)

the trip that you and your husband made to San Francisco in the first part of September, did Mr. Santana go with you? A. He did.

Q. And he went with you from San Fernando to San Francisco? A. He did.

Q. And did you stop in Fresno?

A. We stopped in Fresno and had lunch; and he—he had said from here when my husband come that way—that was the first part—he come Saturday night with Mr. Santana [277] and the following day was Sunday and was a holiday and the following day would be Labor Day, so when he come I asked him—I have never seen a Labor Day before and they were having one of the famous generals—one of the famous generals was going to be in it and I asked if he wouldn't take me and he said he had come with Mr. Santana; that Mr. Santana was going to buy some trucks and he was going to help him drive them back, and I asked him that everything would be closed that day, being Sunday, and the following day being Labor Day, if he wouldn't take me to San Francisco to see my brother, which I haven't seen for years and he said he would.

We started out and Mr. Santana said he was going to put his car in a garage and going to get tires, which everything was closed. He started back—we stopped and we told him that we were going to San Francisco. He said that he was going too, Los Angeles being closed all Sunday and Monday he couldn't do anything—couldn't shop, so he wanted to go and see his godfather, a party by the

(Testimony of Josephine Gonzalez.)

name of Pete that owed his quite a bit of money; that he might as well go and collect it. Close to San Fernando he stopped us and told us if we didn't mind him going along with us because his tires were pretty bad. He drove up and left his car parked and got in our car; and when we went we weren't figuring on going by Fresno Valley; we were going the other way and we went to Fresno and stopped in Fresno and had lunch and from there we went some [278] six miles or so on one side of Mendota and he stopped in a big ranch where they had some cabins and a court and trees and lots of cars and big trees. We stopped the car in front of that big shade there and we walked in and he directed us all around—directed us to the road there. It was country roads and ranches and took us to this big farm there and stopped and we parked our car. He went on straight to a cabin to find Mr. Pete, the party that owed him some money. He stayed there quite a bit and he come back and he told us that that party was not there; that they told him he was in Viola or some such name.

He wanted my husband to go back to Fresno and see if he could find him. When we got to Fresno he did not mention his godfather any more or like you say in Spanish "compadre." He did not mention his compadre but he did talk an awful lot of this Pete that owed him money. He wanted my husband to go to Fresno and he was almost sure he could find this Pete's car and he was coming back with Pete to Los Angeles.

(Testimony of Josephine Gonzalez.)

I did not want to go to Fresno because I don't believe in turning back when I am on the road and I told him that if he wanted to go and look for this Pete why didn't he have one of the parties there in the ranch—there was a lot of cars, take him back and to let us go and proceed on to San Francisco, because I was very anxious to see the parade the following day. He said that as far as we were going to San [279] Francisco he would go on too, because he could always get in touch with Pete in Oakland and he had his brother in—I don't recall the name.

The Court: We are not interested in all of the details of the trip.

Mr. Binns: No.

Mr. Mandel: I was going to object to it but I——

Mr. Binns: I am not interested in it, your Honor.

Cross-Examination

By Mr. Mandel:

Q. Mrs. Gonzalez, when you went to San Francisco with Mr. Santana and your husband you stopped for a short time in Fresno. Without going into any dissertation, you stopped there about an hour, is that right?

A. Long enough to have lunch and have the car serviced.

Q. Then you went on your way to San Francisco?

A. No, sir. We went from there to Mendota.

(Testimony of Josephine Gonzalez.)

Q. How long did you stay there?

A. Just long enough——

The Court: What materiality has this, counsel?

Mr. Mandel: I don't want to go into detail.

The Court: They went to San Francisco.

Q. By Mr. Mandel: You arrived in San Francisco then and then you went where in San Francisco?

A. I went direct to my brother's house at 198 [281] Harriett.

Q. Do you know whether Mr. Santana remained with your husband at that time?

A. How could he when my husband——

Q. I am asking you if he did or he didn't?

A. He did not.

Q. Before you went on the trip from Los Angeles to San Francisco did you take any suitcase along? A. Yes, I did.

Q. That is the suitcase you took along, isn't it?

A. Yes, sir.

Q. And you took that and that was in your Chevrolet car? A. Yes, sir.

Q. You did not take these keys, the set of keys that have been mentioned here that fit your trailer and other—— A. I have them right here.

Q. Did you take these along with you when you went to San Francisco? A. I did not.

Q. Where did you leave that?

A. They were at all times in the trailer.

Q. Where in the trailer?

A. In front of the mantel.

(Testimony of Josephine Gonzalez.)

Q. And the suitcase was locked or was it open when you took it along? [281]

A. I never have locked my suitcase.

Q. All right, it was open on this occasion?

A. It was open; yes, sir.

Q. When you left San Francisco you went—you left with the Chevrolet alone, is that right?

A. Yes, sir.

Q. Left your husband up north with Mr. Santana? Mr. Santana remained up in San Francisco with your husband?

A. When was that?

Q. When you left San Francisco some time in September 1945 you left in the Chevrolet car and you left your husband there, did you not?

A. Yes, sir.

Q. All right. At that time you took along the suitcase with you, did you not?

A. Yes, sir.

Q. And the suitcase—what did it have—what possessions did it have?

A. I beg your pardon?

Q. What did you have inside the suitcase when you went from San Francisco down south?

A. You mean when I left San Francisco for Los Angeles?

Q. That is what I said.

A. I had my coat, a black dress, the shirt and the [282] blouse I was wearing. I had another extra black dress and two changes of underwear and two pairs of stockings.

Q. The—besides the personal apparel you had nothing else other than tools of any kind, did you?

(Testimony of Josephine Gonzalez.)

A. No, sir.

Q. Did you ever at any time have any jack in the suitcase before you made the trip to San Francisco? A. No, sir.

Q. Never had any tools before, did you, in the suitcase? A. No, sir.

Q. All right. Then when you went south you met with an accident? A. Yes.

Q. Your car was wrecked? A. Yes, sir.

Q. And then after you asked your husband or telegraphed your husband that you needed a car, is that correct? A. No, sir.

Q. You told your husband about the accident, that your car was completely wrecked?

A. I phoned my husband and I told him I had met with an accident.

Q. And that you were apparently on the way to recovery, is that right? [283] A. No, sir.

Q. You did not tell him that? A. No, sir.

Q. That you were about to leave the hospital, maybe in a few days?

A. I told him that I was not very seriously hurt and that I would be there for observation—they had taken X-rays and——

Q. Let us forget about the details. You told him you were well enough to go out of the hospital within a few days, is that correct?

A. Yes, sir.

Q. Then you picked up the Plymouth car in San Fernando, didn't you? A. I did not.

Q. Well, where did you get the Plymouth car?

(Testimony of Josephine Gonzalez.)

A. Mr. Santana's brother-in-law brought it to me, to the trailer on Sunday morning after I had left the hospital.

Q. The brother-in-law? Whose brother-in-law?

A. Mr. Santana's brother-in-law.

Q. Where does he live?

A. In Mexicali with Mr. Santana.

Q. I am speaking of San Fernando, California.

A. Yes; you are talking about San Fernando, California, and I am telling you that Mr. Santana's brother-in-law [284] brought the car to me to the trailer.

Q. Do you mean when you returned from the hospital?

A. When I was in the trailer after I had gotten out of the hospital.

Q. When was that?

A. About the 21st or 22nd of September.

Q. And where did you say you met Mr. Santana's brother?

Mrs. Root: Brother-in-law.

The Witness: Brother-in-law. He had brought the Plymouth car to me in the trailer.

Q. By Mr. Mandel: And where?

A. In Monterey Park.

Q. Where does his brother-in-law live?

The Court: She answered that by saying in Mexicali.

Q. By Mr. Mandel: That is what I am trying to find out. His brother-in-law lives in Mexicali. When did he come to Los Angeles?

(Testimony of Josephine Gonzalez.)

A. May I answer you?

Q. That is what I am trying to get at.

A. Well, when I asked the Prosecuting Attorney or the United States Marshal or these gentlemen here that Mr. Santana had come to my brother's house the 14th of September, when I left my brother's house for the Valley that Mr. Santana had come to my brother's house at that particular day. He gave me an address and asked me if I wouldn't pick [285] his brother-in-law—he didn't call him his "brother-in-law" at the time. He said his nephew and his nephew's wife in Sanger, California. I went there and asked the night Marshal, a gentleman from Missouri, where this particular address was. He said, "Who are you looking for?" And I said, "Well, to be exact, I don't know, but," I said, "I am supposed to pick up a couple in San Fernando," and if you check at the highway patrol at the time of my accident you will see that Mr. Garcia and Mr. Gregory Garcia were in my company at the time of my accident.

Q. What date are you speaking of? Before the accident?

A. I am talking about the 15th of September at 4:30 in the morning when I met an accident.

Q. I know——

The Witness: You are all confused because at the time——

Q. I am not trying to be confused.

A. At the time Mr. Santana left with my husband for Los Angeles he left his brother-in-law in

(Testimony of Josephine Gonzalez.)

Brawley and his brother-in-law showed up in San Bernardino.

Q. Mrs. Gonzalez, I am not trying to confuse you and I don't want to be confused and I don't want the jury to be confused.

The Court: Let her tell her story.

Q. By Mr. Mandel: Mrs. Gonzalez, on the 14th of September, the date you are mentioning, where were you? [286]

A. In San Francisco.

Q. All right. You left San Francisco when?

A. I left in the afternoon, early in the afternoon, about midday I should say.

Q. Did you tell Mr. Santana you were leaving San Francisco?

A. I did not; he come to me.

Q. Then you left?

The Court: Let her finish her answer.

Q. By Mr. Mandel: What was the rest of your answer?

A. My husband evidently——

Q. I ask that be stricken.

A. My husband must have told Mr. Santana before that——

Mr. Mandel: I object to that.

The Court: Wait just a minute.

The Witness: If you don't want me to tell you——

The Court: This witness is trying to answer your questions. I think I understand what she is trying to say. She is telling us she left there and that Santana had given the address of certain people at Sanger, and that two people from Sanger

(Testimony of Josephine Gonzalez.)

were with her in the car at the time of the accident.
Now, is that what you tried to tell counsel?

The Witness: Yes, sir.

The Court: And that is what you did tell us?

The Witness: Yes, sir. [287]

Q. By Mr. Mandel: And that was when, did you say?

A. That was the 14th of September when I left San Francisco and the accident was on the 15th of September at 4:30 in the morning.

Q. Now, when did you pick up the Plymouth car, did you say?

A. I did not pick the Plymouth car up.

Q. When did you get it?

A. I didn't get it until the 21st or 22nd of September at my trailer court.

Q. And who brought it there?

A. Mr. Santana's brother-in-law.

Q. What is his name?

A. Gregory. They call him Julio.

Q. Is that the one you mean was in Mexicali?

A. Yes.

Q. All right. Now then, from that time on until the day of the arrest you had the Plymouth car in your possession?

A. From the 21st or 22nd until Mr. Santana's arriving it was parked in front of my sister's house where Mr. Santana's brother-in-law had parked it. At that particular Sunday morning when he took me down to my sister's house, when he come down he asked me if he couldn't leave the car there and

(Testimony of Josephine Gonzalez.)

Mr. Santana on his way back would pick it up. I told him I could not because I was on my way to my sister's— [288] I couldn't take care of myself and I had to go to my sister's, and he said, "Well, when are you going?" And I said, "I expect to go today." He said, "Well, I will take you." He took me and drove me up there and he asked me if he could leave his car over at my sister's. I told him my sister did not have a yard, did not have a garage and he said it would be all right, the neighborhood looked respectable enough that the car would not be stolen from in front of the street and there is where it was parked until Mr. Santana's arrival.

Q. You mean some time in October of this last year, October 3rd or 4th?

A. I am talking about September 21st or 22nd.

Q. But Mr. Santana's arrival——

A. He did not say when Mr. Santana was coming back.

Q. I am saying it has been testified to as around October 30th—September 30th? A. Yes.

Q. Is that about the time your husband returned from San Francisco? A. Yes, sir; the 4th.

Q. Was that the first time you saw the Dodge car of Mr. Santana's, or did you see it in San Francisco?

A. I never saw the Dodge car in San Francisco.

Q. You saw it in Los Angeles?

A. Yes, sir. [289]

(Testimony of Josephine Gonzalez.)

Q. And when you saw it you say that you remember the car as a blue car? A. Yes.

Q. Could it have been viewed as a gray car?

A. It is not.

The Court: That has been asked and answered, counsel?

Mr. Mandel: All right.

Q. Now, when you took the car from Los Angeles to the Valley, the Plymouth car I am speaking of—now, you say you did not go to Mrs. Santana's place in Mexicali? A. I did not.

Q. You never talked to Mrs. Santana then?

A. I have not.

Q. You did not tell her that you were too ill to leave the car that day—you would come the following day? A. I did not.

Q. Nor did you talk to her and go on foot to Mexicali, did you? A. I have not.

Q. And she is not telling the truth, is that right?

A. She is not.

Mr. Binns: I think that is argumentative.

The Court: He has an answer.

Q. By Mr. Mandel: Now then, the large keys that you have before you there that fit your trailer were found in [290] your possession at the time of your arrest, is that correct?

A. The key ring was found in my possession.

Q. When you went to the trailer after you returned from the Valley, some time you say around two or three in the afternoon of the 9th, you went

(Testimony of Josephine Gonzalez.)

to the trailer. Did you pick up the suitcase at that time? A. I did.

Q. Did you pick up the keys at that time?

A. I did.

Q. Were they in the same place that they were before?

A. They were at all times in front of the mantel place.

Q. They had not been touched?

A. Well, I would not say that.

Q. Well, I am asking you, did you find them in the very same spot they were in?

A. They were on top of the mantel, not exactly the same place.

Q. How far was it from where it was when you saw it?

A. Well, it was closer to the sink than it was to the stove when I picked them up, but it is all one large mantel.

Q. Well, it was in the general area where you saw it in July of 1945? That is, the last time you said you saw it?

A. I did not say I saw them the last time.

Q. The last time you had them in your possession that was about the same place, same area as it was when you took [291] the keys—when you took the suitcase along with you on the 9th, is that correct?

A. It wasn't the night of the 9th; it was the afternoon of October—

(Testimony of Josephine Gonzalez.)

Q. Well, the 9th of October, I say, in the afternoon? A. Yes.

Q. Is that right? A. Yes.

Q. You took the suitcase and you also took the keys, is that right? A. Yes, sir.

Q. I understand from your answer that before you say the suitcase was locked when you took it out on the afternoon of October 9th, is that right?

A. I do not, no, and I did not know at the time it was locked.

Q. Well, you took it out from the trailer and brought it into your car, didn't you?

A. I did.

Q. And you put the suitcase where you took it out of the trailer? A. Inside of the car.

Q. You didn't put it in the back of the car?

A. No.

Q. And you did not open it? [292]

A. I did not.

Q. You did not try to examine its contents?

A. I did not.

Q. You did not know what it contained then?

A. I thought it was my tools that I had there at all times.

Q. Well, what was your object in taking the suitcase at that time?

A. Because I was going over to my sister's, and I was going to stay. I didn't know just how long Mr. Santana was going to keep the trailer and I had quite a bit of cleaning and quite a bit of soiled clothes that I took along with me, and some papers

(Testimony of Josephine Gonzalez.)

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(Testimony of Josephine Gonzalez.)

I needed in regard to the wreck of my car, for the insurance.

Q. You did not take the suitcase along with you when you went from Los Angeles to the Valley, but you did take it on the day of the 9th of October when you went to the trailer?

A. Well, I did not need my suitcase in the Valley, because——

Q. Not whether you needed it, but you didn't take it? A. No, sir.

Q. But you did positively take it, you say, on the afternoon of the 9th along with these keys?

A. Yes. [293]

The Court: At this time we are going to take our afternoon recess. The jury will bear in mind the admonition the court has heretofore given. We will take a recess until 1:30.

(Whereupon, at 12:00 o'clock noon a recess was had until 1:30 o'clock p. m. of the same day.) [294]

The Court: Are you ready to proceed?

Mr. Mandel: We are ready, your Honor.

Mrs. Root: Yes, your Honor.

Mr. Binns: The Government is ready.

The Court: Will you stipulate the jury are all present and in the jury box, and the defendants present in court with their counsel?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: So stipulated.

The Court: Let the record so show.

JOSEPHINE GONZALEZ,

called as a witness by and in her own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Resumed)

By Mr. Mandel:

Q. Mrs. Gonzalez, on the 9th of October, 1945, after you returned from Westmoreland to Los Angeles and went to your trailer some time at the hour of two or three in the afternoon, according to your testimony, you then got your suitcase and your keys, is that correct? A. Yes, sir. [295]

Q. And where did you say you put the suitcase in the car?

A. In the back seat of the car on the floor.

Q. Back seat of the car? A. Yes.

Q. And I take it that you never opened it from the time that you took it from the trailer until the time you were placed under arrest, is that correct? A. Yes, sir.

Q. During the day and the early part of the evening, before you went to La Canada, you had gone to various places that you explained, hadn't you? A. In the afternoon?

Q. Yes, after you had not found Santana in the trailer you then went other places, is that correct? A. Yes, sir.

Q. And did you go to any members of your family? A. I did not.

Q. Did you go to any homes at all?

(Testimony of Josephine Gonzalez.)

A. I did not.

Q. What did you do?

A. I went to the cleaners' establishment the first thing and left my cleaning.

Q. Did you take your cleaning?

A. I did. [296]

Q. And you had your suitcase along?

A. Yes, I did.

Q. You did not put the cleaning in the suitcase, did you? A. I did not.

Q. How much cleaning did you take?

A. It was mostly men's cleaning.

Q. Suits?

A. No, I believe it was just trousers.

Q. Where did you leave those clothes?

A. In Monterey Park at the cleaning establishment.

Q. No; I mean—I understood you to say you took some clothes from the cleaners, or am I wrong?

A. From the trailer along with my suitcase and my soiled clothing.

Q. All right. In other words, you did not get any clothes from the cleaners? A. No, sir.

Q. Do you remember when you talked to the Government Treasury Agent, Mr. Polcuch?

A. Yes.

Q. In the early part of January of this year?

A. Yes.

Q. Is that right? A. Yes, sir. [297]

Q. Do you remember the conversation you had with him? A. Yes, sir.

(Testimony of Josephine Gonzalez.)

Q. Do you remember at that time that you told him in the course of your narrative that you had gone to Mexico to see Mrs. Santana?

A. I did not.

Mrs. Root: Just a moment. I will object to the question on the ground it assumes a fact not in evidence.

Mr. Mandel: If you Honor please, the record is clear, if I am not mistaken, and will bear me out.

The Witness: I did not.

Mr. Mandel: Officer Polcuch testified to that.

The Witness: I did not.

The Court: Objection overruled.

Mrs. Root: Exception.

The Court: I do not remember what all has been said in the various conversations.

Q. (By Mr. Mandel) You did not tell him that?

A. I did not.

Q. You saw Luis, this man Villalva, sometime in September of last year? A. I did not.

Q. When did you see him last?

A. It was the summer before last.

Q. What is that? [298]

A. Summer before last.

Q. You mean in 1944? A. Yes, sir.

Q. You have not seen him since the summer of 1944? Until this date?

A. I saw him when he was in the hospital in the winter.

Q. When?

A. I believe it was somewhere around in October

(Testimony of Josephine Gonzalez.)

or November, but I don't remember whether it was 1943 or 1944.

Q. From that time on you have not seen him again?

A. I did see him summer before last.

A. I am speaking of from October or November of 1943—you say that was the last time you saw him?

A. No. I said I saw him then when he was in the hospital.

Q. Now, from then on did you see him again?

A. I saw him summer before last when I come to Los Angeles.

Q. The summer before last? You mean the summer of 1943?

The Court: I think her statement is clear, counsel. It is argumentative. She said she saw him in the hospital and that the last time she saw him was during the summer of 1944. Is that correct?

Mr. Mandel: Summer before last. [299]

The Witness: That would be 1944, wouldn't it? Last summer was 1945, was it not?

The Court: And it was the summer before that.

The Witness: Yes.

Q. (By Mr. Mandel) The summer of 1944?

The Court: She has answered the question, counsel. Don't ask her that again.

Q. (By Mr. Mandel) You have not seen him since that time? A. I have not.

Q. And you don't know where he is at this time? A. I do not?

(Testimony of Josephine Gonzalez.)

Q. Do you know where he lives?

A. I know where he lived.

Q. Where? A. At 3731 Maple.

Q. Is he a member of your family?

A. He is my brother.

Q. Your brother, and you have not seen him since that time? A. I have not.

Q. He lives in Los Angeles? A. He does.

Q. You have not seen your brother from the summer of 1944 to the present time? [300]

The Court: Counsel, that has been asked and answered several times.

Mr. Mandel: I just want to make it clear.

The Court: I understand that, but I do not like the idea of re-asking questions simply for the purpose of emphasis.

Mr. Mandel: All right, your Honor.

Q. Now then, may I ask you this: When you were arrested and the officers took you out of this car—took out this opium from the suitcase, the first thing you say in your testimony is that Mr. Santana probably owned it. That is what you said?

A. I said if it was there that Mr. Santana had put it there.

Q. How did you happen to make that statement?

A. For the simple reason that he had my trailer and he was the only one that had access to it while I was gone.

Q. Were you at the trailer all—you don't know whether anybody else went to the trailer, do you, during your absence?

(Testimony of Josephine Gonzalez.)

A. Unless he took somebody there.

The Court: That is self-evident.

Mr. Mandel: That is self-evident, your Honor.
All right.

Q. Then you concluded immediately when the officer showed you the opium that Mr. Santana must have been the owner [301] of it, is that right?

A. Yes, sir.

Q. No other person came to your mind at all that night that might be the owner—that it might be someone else's?

A. Nobody had access to my trailer but Mr. Santana.

Q. Your idea was to place the onus of responsibility on someone else, wasn't it.

The Court: That is argumentative, counsel. You can argue the case at the end of the case.

Q. (By Mr. Mandel) I don't know whether this has been mentioned or not, but didn't you tell me or counsel for the Government or your own counsel that you never had any tools in that suitcase before?

A. I said I had them when I picked them up from my wrecked car.

Q. You had them when?

A. I had them when I went to my wrecked car and picked them up.

Q. When was that?

A. That was about the 21st or 22nd of September when I left the hospital.

(Testimony of Josephine Gonzalez.)

Q. That was the time you put—when you had your wreck you put them in the suitcase?

The Court: Counsel, that has all been gone over time and time again. [302]

Mr. Mandel: Your Honor, I appreciate your Honor's trying to assist, but I am interested in seeing that all the rights of my client are protected. I may make mistakes, but I think my client's interests are very important.

The Court: The court is also interested in seeing that justice is done. That is the only thing the court is interested in.

Mr. Mandel: That is true as far as I am concerned.

Q. Did you discuss this case with the members of your family who testified this morning?

A. I have not.

Q. Never discussed it with them at all about their testimony in court, is that it?

A. How could I?

Q. I am asking you did you or didn't you?

A. I have not.

Mr. Mandel: That is all.

Mrs. Root: May I ask a question on redirect examination at this time?

The Court: Yes.

Redirect Examination

By Mrs. Root:

Q. Mrs. Gonzalez, I am not quite clear about the questions that counsel for the Government asked you about the various kinds of tools. Which of the

(Testimony of Josephine Gonzalez.)

tools did you leave in [303] your suitcase when Mr. Gonzalez, your husband, took the jack out of your suitcase?

A. I left two wrenches, one screwdriver, one hammer and one hitch trailer.

Q. In the suitcase? A. Yes.

Q. And you left the tools in the suitcase and the suitcase in the trailer as of October 5th?

A. Yes, ma'am.

Mrs. Root: That is all as far as I am concerned.

Recross Examination

By Mr. Binns:

Q. Mrs. Gonzalez, you met a man named Gregory in Sanger? A. I did.

Q. Had you ever seen him before?

A. I did.

Q. How many times had you seen him before?

A. About two or three times.

Q. And where had you seen him before?

A. In Imperial Valley.

Q. With Mr. Santana? A. I did.

Q. And you say that he is the one who brought Mr. Santana's Plymouth car to you at your trailer?

A. Yes, sir. [304]

Q. Was your name before you married, Vilalva? A. It was.

Q. Now then, when you made that statement that the opium must have belonged to Mr. Santana, had you ever heard of opium in connection with Mr. Santana? A. I had not.

(Testimony of Josephine Gonzalez.)

Q. Now then, do you remember this conversation you had with Mr. Beckner in the Hall of Records?

Mrs. Root: Hall of Justice, you mean.

The Witness: I do.

Q. (By Mr. Binns) Do you remember telling him in substance in that conversation, that Mr. Santana had told you to take the Plymouth and to park it with the keys in it on the east side of Brawley and then to mail a card to his wife?

A. No.

Q. You don't remember telling him that?

A. No, I didn't say that.

Q. Can you tell us what you did tell him?

A. I told him that, when I left for Imperial Valley, when we were in the trailer, I told Mr. Santana that I probably would not bring the car back because I wasn't in a position to drive and my husband was not coming back with me and I probably would come on the bus. He said if I did so to take the car to the east side in Brawley and mail a card to postoffice Box 1174 in Calexico and his nephew would come [305] and get it.

Q. That is what you told Mr. Beckner?

A. Yes, sir.

Q. And you also told the same thing to Officer Polcuch?

A. Yes, sir.

Q. How then, did Mr. Santana tell you that?

A. He did and in the trailer I didn't think I was going to come with the car. My intention wasn't to bring the car back because I was in no position

(Testimony of Josephine Gonzalez.)

to drive it, but the buses—I waited there until Tuesday morning and the buses were still on strike.

Mr. Binns: No further questions.

Mrs. Root: That is all. The defendant Gonzalez rests.

A Juror: Is it right and proper to ask a question to clear things up?

When you got to the trailer on the 9th was it locked up tight, when you returned from Brawley to the trailer on the 9th?

The Witness: You mean the trailer was locked?

The Juror: Was it locked?

The Witness: Yes, it was.

The Juror: How did you get in?

The Witness: My husband had a key and I had a key when I left or, Mr. Santana rented the trailer and I gave him my key and when I came back from Imperial Valley my husband gave [306] me his.

Mrs. Root: We have rested, if your Honor please.

The Court: Any rebuttal?

Mr. Binns: Yes, I will call Officer Polcuch.

OSCAR POLCUCH

called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was recalled and testified in rebuttal as follows:

Direct Examination

By Mr. Binns:

Q. Agent Polcuch, calling your attention to the conversation which you had with Mrs. Gonzalez in the Hall of Justice, in that conversation did she tell you that she had gone to San Francisco in the same car with Mr. Santana?

A. No. She stated that she and her husband had gone to San Francisco in their Chevrolet and that after they had arrived in San Francisco it was by chance that she met Santana there.

Mr. Binns: That is all. Cross examine.

Cross Examination

By Mr. Mandel:

Q. Agent Polcuch, I would like to ask you if in the same conversation she didn't tell you that she had gone to Mexico and seen Mrs. Santana?

A. No, she did not state that. [307]

Q. That statement was not made by you?

A. No.

Mr. Mandel: That is all.

Q. (By Mrs. Root) Mr. Polcuch, did you take that statement down word for word?

A. Not word for word. I jotted down notes on it.

Q. In other words, the statement that you gave

(Testimony of Oscar Polcuch.)

us was your interpretation of the substance of her conversation, is that right?

A. The statement I am giving here is from notes I took down at the time I was questioning her.

Q. Have you got any note on that last conversation that you testified about?

A. Yes, I have it right here.

Q. I would like to see it if I may. You are now reading from the first page of a document that was written in your handwriting, is that right?

A. Yes. This is the first page. I am just trying to determine whether it is on the first or second. Here it states:

“Santana left the trailer alone early in the morning after V. J. day.”

Further:

“Josephine asked Alfonso to take her to San Francisco to visit her brother. Josephine and [308] Alfonso left the trailer Monday after V. J. Day to San Francisco to visit Alfonso’s brother, to visit Alfonso’s brother Jose Gonzalez and another brother, Luis Ramon Gonzalez.”

Q. Where does it say anything in that note that “by chance” she met Santana in San Francisco?

A. It is further down here.

Q. I would like to see that.

A. “While in San Francisco Santana was brought by Alfonso to Josephine’s brother’s home where Josephine was living. During the conversa-

(Testimony of Oscar Polcuch.)

tion with Santana he said he was in San Francisco to collect some money from some people and"

Further that:

"she never saw Santana after that."

Q. Is there anything stated there about asking whether or not she took Santana to San Francisco or she was with Santana going to San Francisco?

A. Inspector Beckner and I asked her about that and she repeated that she and her husband went.

Q. Other than that, your statement that she and her husband went to San Francisco, you have nothing in your notes to indicate that she said, "My husband and myself alone went to San Francisco"?

A. My notes do not show that. It is from my own [309] recollection of that questioning that I also add to this.

Q. Is it from your recollection likewise that after you asked her about going to San Francisco that you might have said to her before she said, "By chance", that "I met him in San Francisco," and that you said to her, "Well, did you see Santana while in San Francisco?" And she answered, "By chance I met him in San Francisco"?

A. No, she stated that after she had arrived in San Francisco she met Santana there.

Q. By chance?

A. And as I recall it, she was surprised to see him.

Q. Did she say she was surprised to see him or "by chance" she met him in San Francisco?

(Testimony of Oscar Polcuch.)

A. I don't recall just what language she used in that regard.

Q. In fact, she talked quite rapidly, is that not true? A. That is right.

Q. And she did talk that rapidly when you were talking to her at the County Jail on January 22nd in the presence of Mr. Beckner and others?

A. That is correct; and it was necessary for us to take her over the conversation time and again.

Mrs. Root: That is all, thank you.

Mr. Mandel: Just one question more.

Q. Inspector, did Mrs. Gonzalez in the conversation that [310] you are now relating tell you that Mr. Santana had instructed her or her husband to leave the car in Mexico?

A. No. She stated that when Santana paid her \$10.00 for the rent of the trailer and when he had loaned her his car that Mr. Santana instructed her to leave the car on the east side of Brawley and to write a card to a certain box number in Calexico and that his wife or a relative would pick the car up.

Mr. Mandel: That is all, thank you.

The Court: That is all.

Mr. Binns: May I have the memorandum marked for identification, your Honor?

The Court: Yes.

(The document referred to was marked Plaintiff's Exhibit No. 16, for identification.)

Mr. Binns: I offer Government's Exhibit No. 16 in evidence.

(Testimony of Oscar Polcuch.)

The Court: It will be received.

(The document heretofore marked as Plaintiff's Exhibit No. 16, was received in evidence.)

Mr. Binns: Is that memorandum in shorthand?

The Witness: No, it is not.

Mr. Binns: The Government rests.

Mrs. Root: We rest on behalf of Mrs. Gonzalez.

Mr. Mandel: I would like to put on one witness in [311] rebuttal. I need an interpreter.

The Court: Is an interpreter present?

(No response.)

The Court: Have you any objection to using the police officer as an interpreter?

Mr. Mandel: None at all, we have no objection.

The Court: Or do you want to wait for the interpreter?

Mr. Binns: If they are willing to take Mr. Pena we will not object.

The Court: Counsel understands Spanish?

Mr. Mandel: Yes.

(Rudolph Pena was thereupon sworn as an interpreter to interpret the English into Spanish and Spanish into English.)

JESUS SANTANA,

called as a witness by and in his own behalf, having been previously duly sworn, was recalled and testified further in rebuttal as follows:

Direct Examination

By Mr. Mandel:

Q. Mr. Santana, when you came to Los Angeles with Mr. Gonzalez where did you stay?

A. I stayed at the trailer.

Q. Was Mr. Gonzalez at the trailer with you?

A. The two of us stayed at the trailer. [312]

Q. Did you at any time make arrangements with Mrs. Gonzalez or Mr. Gonzalez about paying them rental for the use of the trailer?

A. I did not. The money I gave him was to pay for the gasoline on the return trip.

Q. That was on the date of October 5th when Mr. Gonzalez left for the Valley?

A. That was October 5th at 1:00 p.m.

Q. Did you tell Mrs. Gonzalez in San Francisco, before she departed with the Chevrolet—I will withdraw that.

Did you see Mrs. Gonzalez at the time she departed for Imperial Valley?

A. We were standing on the corner when she drove by and he had previously told me that she was to pick up a friend of his that was to accompany her to Imperial Valley.

Q. And who was that?

A. The party was Gregory Garcia and his wife.

Q. Did they live in Fresno?

(Testimony of Jesus Santana.)

A. No; they were working in a ranch picking grapes. I don't know exactly where they lived.

Q. Do they live in Los Angeles?

A. No; they live in Mexicali.

Q. Did you give any instructions to anyone to give Mrs. Gonzalez the car through Mr. or Mrs. Garcia?

A. I did not tell Mr. or Mrs. Garcia anything.

Q. Did you ever have access to these keys of the trailer? A. No.

Q. Did you ever place these keys above the mantle place in the trailer or any place in the trailer?

A. I never seen those keys.

Q. Did Mrs. Gonzalez on the 9th of October ever leave any note that she had been at the trailer or anything of that kind?

A. I didn't see any note. I arrived about 9:30 or 10 o'clock to go to sleep. The only thing I noticed was the room was clean.

Q. You never saw Mrs. Gonzalez at all that day?

A. No; I did not see her that day until the officers brought her when they arrested her.

Mr. Mandel: That is all.

Mr. Binns: No questions.

Cross Examination

By Mrs. Root:

Q. When the room was cleaned did you notice that the suitcase was gone?

A. I didn't see anything—that suitcase has never been there.

(Testimony of Jesus Santana.)

Mrs. Root: That is all.

Mr. Mandel: Defendant Santana rests. [314]

The Court: Does everybody rest?

Mrs. Root: We rest.

Mr. Binns: We rest, your Honor.

Mr. Mandel: Yes.

The Court: The court on its own motion is going to dismiss Count 3 of the indictment, which is the conspiracy count, for the reason that the acts charged in the conspiracy count are the same acts charged in the substantive counts; and if there is no guilt insofar as the substantive counts are concerned, there would be no guilt in the conspiracy count.

By doing this I will simplify the problem for the court, counsel and the jury. They will have only two counts then to consider.

(Whereupon, argument of counsel and instructions by the court followed.) [315]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 7th day of June, A. D. 1946.

/s/ JACK D. AMBROSE,
Official Reporter.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

Thursday, February 21, 1946, 1:30 p.m.

Instructions to the Jury by the Court

The Court: Ladies and gentlemen, you have listened to nearly two days of testimony and argument of counsel and now we come to the part I must play in the picture by giving you the instructions of the law of the case which, under your oaths as jurors, you agreed to follow to the best of your ability.

In giving these instructions I want you to bear in mind that we are dealing here in this case with the unlawful possession of opium. The undisputed facts in this case are that the opium was found in two different cars. Really the question for you to determine in this case is whether or not both defendants or either defendant had possession of that opium. In other words, we have heard the testimony of a can of opium being found in the Dodge automobile. If you are convinced beyond a reason-

able doubt that that can of opium belonged to the defendant Santana then it is your duty under your oaths to find him guilty. And if you should believe beyond a reasonable doubt that the opium found in the Plymouth automobile belonged to the defendants or either of them and Mrs. Gonzalez had knowledge that that opium was in the Plymouth automobile then it is your duty under your oaths to find them [317] guilty.

On the other hand if there should exist in your minds a reasonable doubt as to whether or not Santana knew that that can of opium was in the Dodge automobile then he is entitled to the benefit of that doubt. And if there should be a reasonable doubt in your mind as to the defendant Gonzalez having knowledge of the opium and it having been in the suitcase in the Plymouth automobile, then she is entitled to the benefit of that doubt and you should acquit her.

We have spent a day and a half covering a lot of trips and a lot of journeys but when you boil the case down it is simply a question of fact for you to determine whether this opium belonged to both parties, whether it belonged to either one of the parties or whether it did not belong to either of them. And if on any of those points you entertain a reasonable doubt, then it is your duty to bring in a verdict of not guilty. On the other hand if you are convinced beyond a reasonable doubt of the guilt of either or both of them under the instructions I am about to read to you, then it is your duty to bring in a verdict of guilty as to either

or each of them. However, if any of the foregoing comments in any manner conflicts with the instructions I am about to read to you such written instructions must control.

You are instructed that in this indictment, after the dismissal of the third count, there remains two counts which [318] are separate and distinct from each other, and although the defendants are jointly charged, that is, both are named in each count in the indictment, nevertheless separate verdicts may be found in connection with each count of the indictment and in connection with each defendant.

In Count One of the indictment the defendants, and each of them, are charged with the violation of Section 174 of Title 21 of the United States Code. That Section reads as follows:

“If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such persons shall be * * *.”

Here, you are not concerned with the penalty.

This section, commonly known as the Jones-Miller Act, was not passed as a revenue measure but is one that was passed to control the illicit traffic in narcotics. I presume I need not explain to you, as we all fully understand, that narcotics

being habit forming are of such a character that [319] it is proper for Congress to enact measure to prevent their illicit usage and to declare it a crime to import, possess, sell, or distribute narcotics unless the laws are complied with. In this connection it is proper for me to explain to you that the law provides for the lawful possession or usage or administration of narcotics, that is, in a medicinal manner, under the supervision of a licensed physician or medical practitioner to alleviate suffering in cases justified by a reputable physician.

This statute, the Jones-Miller Act, is one which prescribes a penalty for the possession of narcotics which have been unlawfully imported into the country, and the law itself place a burden upon the defendant, that is, it requires the defendant through some manner of evidence to explain the possession satisfactorily to you, the members of the jury, for mere possession alone of such narcotics is, under the law, sufficient evidence to authorize the conviction of the defendants, or either of them, unless such possession is satisfactorily explained.

The section of the law to which I have just referred is Section 181 of Title 21, United States Code, which reads as follows.

“All smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported contrary to law, and the burden [320] of proof shall be on the claimant or the accused to rebut such presumption.”

In other words, the statute says that whenever

in a trial for a violation of Section 174, the Section involved in the second count in the instant case, the defendants are shown to have possessed or to have been in possession of the narcotic drug, such possession shall be deemed sufficient evidence in itself to authorize conviction unless the defendants explain the possession to the satisfaction of the jury. It is not necessary for the Government in this case to have introduced any evidence, whatever, tending to show that the opium in question was imported contrary to law or that the defendants had knowledge that it was so imported, because the law itself raises the presumption of importation and knowledge by the defendants from the unexplained possession of the narcotic drug.

You are instructed that smoking opium is never legally imported. And I might state in that respect while the indictment alleges a certain quantity of opium it is immaterial whether the Government proves that amount as long as it is smoking opium. I believe the indictment describes it as 119 ounces. It is just as much a crime if there is only one ounce involved.

In Count Two of the indictment the defendants are charged with a violation of Section 2553 (a) of Title 26, United [321] States Code, which reads as follows:

“It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in Section 2550 (a) except in the original stamped package or from the original stamped package; and the absence of

appropriate taxpaid stamps for any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found; * * *."

A subsequent section provides for the punishment in the event of violation of the section just read to you. Punishment, if any, is a matter within the province of the Court. You are concerned solely with whether or not there has been a violation of the section which sets forth that it is unlawful for any person to purchase, sell, or distribute narcotics excepting in the original stamped package or from the original stamped package.

This statute is sometimes referred to and known as the Harrison Narcotic Act.

And I further wish to call to your attention that the section which I have read declares that in the absence of the appropriate tax-paid stamps, that is to say, the revenue stamps which are required to be purchased and placed upon all packages containing narcotics, that the absence of such stamps is prima facie evidence of the unlawful purchase of narcotics. [322]

You are instructed that while the section of the law which I have just read to you was passed primarily as a revenue measure, nevertheless, it has a twofold object, one of which is for the collection of revenue and the other to control and prevent the unlawful possession, sale, or distribution of narcotics.

This section provides that all narcotics, to be lawfully possessed or bought, sold or distributed,

must be contained in either an original stamped package (that is to say, in a package upon which are affixed internal revenue stamps provided by law), or must have been sold from the original stamped package or packages.

This particular law was enacted for the purpose of permitting a restricted use of narcotics for distribution by hospitals, druggists and physicians, that is, certain exceptions are provided for in the law so as to permit the use of narcotics in a legitimate medicinal manner, but the section further provides that if anyone possesses narcotics and claims that he comes within the exceptions provided for by the statute, the duty is upon the defendant to explain and justify his possession.

While the Harrison Narcotic Act is, in a sense, a tax-raising measure in that it is a part of the Internal Revenue law, nevertheless, the Government is not required to show that it has been defrauded in any manner in order to obtain a conviction under this section. [323]

You are instructed that if you believe from the evidence in this case that the defendants had in their possession smoking opium, or other narcotics, upon which no revenue stamps were affixed and cannot satisfactorily explain the same, that that is sufficient evidence from which to find them guilty as to Count Two.

You are instructed that possession is defined as an act, fact, or condition of a person or persons having such control of property or a thing, that he

or they may enjoy it to the exclusion of all others having no better right than themselves.

Possession is synonymous with ownership, control, mastery or custody of a matter or thing.

In other words, to put it differently, possession is the exercise of such power over a thing as attaches of ownership or the possessor must have had such dominion and control of a thing as would give him power of disposal.

If you find beyond a reasonable doubt and to a moral certainty that the defendant Josephine Gonzalez did have such possession, you will find her guilty as charged.

If you further find beyond a reasonable doubt and to a moral certainty that the defendant Jesus Santana did have such possession, you will find him guilty as charged.

You are instructed that Section 550 of Title 18, of the United States Code, reads as follows:

“Whoever directly commits an act constituting [324] an offense defined in any law of the United States, or who aids, abets, counsels, commands, induces, or procures the commission, is a principal.”

Before you can convict the defendants, or either of them, in this case it must appear from the evidence, beyond a reasonable doubt, that the defendants, or either of them, and not someone else committed the offense charged. It is not sufficient that the evidence show that someone committed the crime. if it does so show, or that the probabilities are that the defendants and not someone else committed that

crime. Unless those probabilities are so strong as to remove all reasonable doubt as to the guilt of the defendants, or either of them, your verdict must be not guilty.

You are instructed that the defendants, to disprove his or her knowledge that the drug was imported into the United States contrary to law under Count One of the indictment in this case, need not prove that the drug was lawfully imported but needs only to explain his or her possession.

By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material [325] element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being re-stated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, [326] your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any

part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should [327] distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

The defendant has offered himself as a witness and has testified in the case. Having done so, you are to estimate and determine his credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendant may have in the case, his hopes and his fears, and what he has to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find

have been proved as seem justified in the light of your experience as reasonable men and women.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable [328] doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out, must be wholly left out of account and disregarded. The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the

facts. The law you must accept from the court as correctly declared in these instructions.

You are instructed that if I have said or done anything which has suggested to you that I am inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestions.

I have not expressed, nor intended to express, nor have I intimated nor intend to intimate, any opinion as to what witnesses are or are not worthy of credence; what facts are, or are not, established; or what inference should be drawn [329] from the evidence adduced. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

At times throughout the trial the court has been called upon to pass on the question whether or not certain evidence offered might properly be admitted. With such rulings and the reasons for them you are not to be concerned. Whether offered evidence is admissible is purely a question of law, and from a ruling on such a question you are not to draw any inference as to what weight should be given the evidence, as to the credibility of a witness. In admitting evidence, to which an objection is made, the court does not determine what weight should be given such evidence. As to any offer of evidence that was rejected by the court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

If in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions and as a whole, and to regard each in the light of all the others.

The verdict to be rendered must represent the considered [330] judgment of each juror.

In order to return a verdict it is necessary that such juror agree thereto. Your verdict must be unanimous.

When you retire to your jury room to deliberate, you will select one of your number as foreman and he will sign your verdict for you when it has been agreed upon. You will then return into court with the verdict and your foreman will represent you as your spokesman in the further conduct of this case in this court.

For your convenience a form of verdict has been prepared in which you will insert your findings of either guilty or not guilty as to each defendant and date it and have your foreman sign it.

May I ask if there are any exceptions to be noted or objections to the instructions?

Mr. Mandel: None, your Honor.

Mrs. Root: None, your Honor.

The Court: Everybody is happy with the instructions.

Mr. Mandel: I think they are very fair, your Honor.

Mrs. Root: I am agreeable.

The Court: The bailiffs will be sworn.

(Whereupon, at 3:45 o'clock p.m. the bailiffs were sworn.)

The Court: Ladies and gentlemen, you will retire with the bailiffs to the jury room to deliberate. If there are any exhibits that you desire if you will notify the bailiff he [331] will hand them to you.

(The jury return to open court for further instructions at 5:35 o'clock p.m.)

The Court: Will you stipulate the jurors are all present and in the jury box and defendants with their counsel are also present?

Mrs. Root: So stipulated.

Mr. Mandel: Yes, your Honor.

Mr. Binns: So stipulated.

The Court: Ladies and gentlemen, the bailiff advises the court that the jury desires to ask the court some questions. Before asking any questions I want to state to you that it would be improper and the court is not interested in how the jury stands. The court is only interested in helping you insofar as the law is concerned. The facts are your problem and not mine.

With that explanation I will be glad to listen to any question the foreman desires to ask.

The Foreman: Your Honor, the jury would be interested to know if the Government can give us the significance of the figures 59 and 60 scratched on the bottom of the cans with a sharp instrument.

The Court: It would not be proper at this time

for any additional evidence to be introduced. Whether it has any significance or not the evidence has not indicated and I presume [332] that the only significance, if any, and this is simply a presumption and is not binding upon you, that it indicates a close connection between the one can and the other group of cans, but whether it has any special significance or not is a matter upon which there is no evidence and upon which the Government is not now allowed to offer any evidence or either side. In other words, the question on that subject cannot be answered. You will have to consider the evidence that has been introduced and nothing else.

The Foreman: The other two questions are pretty much of the same nature and I suppose the court will be unable to answer those questions also. We are interested to know why the cardboard carton when seized by the State and City officers was not immediately examined for fingerprints of some kind—the exterior of the carton.

The Court: That is a question that cannot be answered. I appreciate this in a new panel. For most of you this is your first experience on a jury; and in this case as in every case whether or not all the evidence has been introduced that could have been introduced, or whether there was a search for fingerprints or not, is not within our province. There is no evidence on that. You will recall the evidence in this case was that the boxes were in the possession of the State officers for some time before they came into the possession of the Federal Narcotic Bureau. [333]

As I stated to you before, you have the undisputed evidence here in this case that narcotics were found and whoever had possession of those narcotics are guilty under this Act, under the instructions that I have given to you. Nobody has disputed the fact that they are narcotics; nobody disputed the fact that they were found where the testimony indicated they were found. Your problem is to determine whether either of the defendants or both of them or neither of them actually had possession at any time of these narcotics. In other words, if there should be a reasonable doubt in your mind that these defendants or either one of them ever had possession of the narcotics it is your duty to acquit them. On the other hand, if you are satisfied that both of them or one of them had possession and you are satisfied beyond a reasonable doubt, then it is your duty to convict.

The Foreman: The third question, your Honor, is why were State and Los Angeles City officials watching the auto court and the trailer the most of that day of October 9th, I think it was.

The Court: Well, of course that evidence, if it had been offered, would have been considered immaterial—why the officers were watching a particular place. That was brought out incidentally in the evidence in the case and whether you are to give it any weight or not is another question for you to determine. If the Government had offered to prove or [334] offered evidence as to why they were watching these people the court would not have admitted it because they are charged in this case

specifically, that is, the defendants, with having opium in their possession and whether they had opium before or there was a suspicion of having opium before, is not what they are charged with in this case. They are charged in this case with having opium in their possession and the question for you to answer is did they or did they not, these defendants or either of them, have this opium in their possession.

The opium was there. Was it put there by some mysterious third party or did one of the defendants place it in the car or did neither of the parties, or did it grow there? That is for you to determine.

Are there any exceptions to any comments the court has made? I have tried to answer these questions fairly without trying to influence the jury one way or the other as to the fact concerned.

Mrs. Root: If your Honor please, I do, but I think we should approach the bench with counsel, if we may.

The Court: Yes.

(The following proceedings were had without the hearing of the jury:)

Mrs. Root: Your Honor, I am a little concerned about the court's use of the word "possession" without its legal definition. I am wondering if just merely the use by your [335] Honor of the word "possession" if they feel they possessed it without the legal definition of "possession knowingly".

The Court: I will instruct the jury that whatever I have said must be considered in connection with the instructions I have heretofore given.

Mrs. Root: I think if that is stated it will be satisfactory.

(The following proceedings were had within the hearing of the jury:)

The Court: Any comments that I have made, ladies and gentlemen, are to be considered in connection with the instructions of the court heretofore given. It is not the intention of the court to deviate from the written instructions that I read to you in this case.

Of course where I have referred to "possession"—if either one of the defendant had opium in their car and did not know it was there it must be self-evident that person would not be guilty. If somebody, while you are in your jury room, went out and put some opium in your car and the officers came along and found it you certainly would not be guilty of any offense. The parties must have had that opium in their car knowingly, knowing it was there. They must have had that knowledge in order to be guilty. Have I made it clear?

Mrs. Root: Thank you, your Honor.

The Court: Now, I wish to state that it is very, very [336] close to the dinner hour and I was wondering if the court should not send you out to dinner. Do you think further deliberations before dinner would be of any value to you? Of course you will have to be locked up until you either have arrived at a verdict or the court is satisfied that keeping you locked up further is unnecessary.

The Foreman: Could we have about ten minutes?

The Court: Yes, you may retire to the jury room.

(Whereupon, at 5:45 o'clock p.m., the jury retired from the courtroom.)

(At 6:10 o'clock p.m., the jury returned to open court.)

The Court: Will you stipulate the jurors are present and in the jury box and the defendants are present in court with their counsel?

Mr. Mandel: So stipulated.

Mrs. Root: Yes, your Honor.

Mr. Binns: Yes, your Honor.

The Court: Let the record so show.

Ladies and gentlemen, have you arrived at a verdict?

The Foreman: We have, your Honor.

The Court: Present it to the clerk, please. The clerk will read the verdict.

(Whereupon, the verdict of the jury was read.)

The Court: Ladies and gentlemen, is that your verdict as read? [337]

Jurors: Yes, it is.

The Court: Do you desire to have the jury polled?

Mrs. Root: We will waive it as far as we are concerned.

Mr. Mandel: I would like to have the jury polled, your Honor.

The Court: Poll the jury.

(Whereupon, the jury was polled by the clerk.)

(Whereupon, the jury was excused.)

(Whereupon, at 6:15 o'clock p.m., the proceedings in the above entitled matter were concluded.) [338]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 29th day of August A. D., 1946.

/s/ JACK D. AMBROSE,
Official Reporter.

[Endorsed]: Filed Aug. 30, 1946. [20]

[Endorsed]: No. 11285. United States Circuit Court of Appeals for the Ninth Circuit. Josephine Gonzales, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed October 8, 1946.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11285—Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPHINE GONZALES,

Defendant.

ORDER

Upon reading and filing the stipulation of the parties, by their respective counsel, and the court being fully advised in the premises,

It is hereby ordered that defendant and appellant herein may file the Reporter's Transcript of proceedings in lieu of a bill of exceptions in this cause.

Dated: This 12th day of August, 1946.

/s/ FRANCIS A. GARRECHT,

/s/ W. E. ORR,

/s/ WILLIAM HEALY,

United States Circuit Judges.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION FOR FILING REPORTER'S
TRANSCRIPT OF PROCEEDINGS IN
LIEU OF BILL OF EXCEPTIONS

It Is Hereby Stipulated and Agreed by and between the parties hereto, through their respective counsel, that the Reporter's Transcript of proceedings may be filed in its entirety in lieu of a bill of exceptions.

It is further stipulated and agreed that an appropriate order may be entered upon this stipulation.

/s/ JAMES M. CARTER,

U. S. Attorney,

Attorney for Plaintiff.

By ERNEST A. TOLIN,

Asst. U. S. Attorney.

/s/ GLADYS TOWLES ROOT,

Attorney for Defendant.

[Endorsed]: Filed Aug. 12, 1946.

[Title of Circuit Court of Appeals and Cause.]

POINTS RELIED UPON ON APPEAL

The points upon which Appellant relies on appeal are as follows:

I.

The evidence is insufficient to sustain the verdicts and Judgments.

a. There was no evidence personal to the accused which showed commission by her of either of the offenses charged.

b. There was no evidence that Appellant placed the opium in the suitcase where it was found or that she had no knowledge that the suitcase or automobile contained opium.

c. There was no evidence that Appellant had any connection whatsoever with the opium found in the Dodge automobile.

II.

The Trial Court erred in denying appellant's motion to suppress evidence and in overruling her objections to the introduction in evidence of the opium.

The cans contained opium which had been taken from the Plymouth automobile but were inadmissible for the reason that a *search had* not been obtained and no showing was made of the acceptance of probable cause.

III.

The Court erred in failing to instruct the jury

that appellant could not be convicted on both counts though she could be convicted on either one.

a. The offenses charged in Counts One and Two arose from the same act and the evidence introduced in support of each was identical.

IV.

The Court erred in denying appellant's motion for a new trial on the grounds that appellant could not be convicted on both counts.

/s/ GLADYS TOWLES ROOT,
Attorney for Appellant.

[Endorsed]: Filed Nov. 4, 1946.

[Title of Circuit Court of Appeals and Cause.]

MOTION FOR LEAVE TO AMEND DESIGNA-
TION OF POINTS TO BE RELIED UPON

Defendant and Appellant, through her attorney Gladys Towles Root, hereby moves this Honorable Court for leave to amend the Designation of Points to be Relied Upon by substituting for the Points heretofore designated another Point by which the constitutionality of the laws involved will be challenged and the jurisdiction of the trial court to entertain the prosecution or to try the case or pronounce judgment will be put in issue. The grounds upon which this motion is based are:

I.

Said counsel represents that although she is con-

vinced that the points heretofore designated are meritorious in substance, after much study of the record she entertains serious doubts that the errors designated were not waived under rules which require timely objections or other procedure in order that such errors may be the basis of a successful appeal.

II.

After careful research of the Federal decisions pertaining to the constitutionality of laws which delegate legislative functions and of decisions relative to the invalidity of vague, indefinite and uncertain penal laws, said counsel believes that the Congressional Acts upon which the charges contained in the instant indictment are based, to-wit, Title 21, Section 174 and 2550, are null and void.

III.

Counsel says that her failure to reach the above conclusion earlier is not due to lack of diligence on her part and in substantiation of this representation avers that she has been unable to find in any appealed case where said laws were involved a single instance, in which their constitutionality has been questioned upon the ground which she seeks leave to present, although said laws were enacted many years ago and many appeals have been taken from convictions under them by able attorneys. Hence, said counsel feels that her failure to discover the invalidity of said laws does not indicate lack of legal acumen or of labor upon or study and consideration of the case.

IV.

The Point which Appellant desires to, and if permitted, will present in lieu of those heretofore designated, is:

V.

Section 174 of Title 21 of the United States Code and Section 2550 (a).

Each of these Sections are violative of the Due Process Clause of the 14th Amendment To The Constitution of the United States, because: 1. They and each of them delegate to the jury uncontrolled power to find the accused guilty and to base this verdict upon bias and prejudice, in that each of said laws requires that, possession of the inhibited drug having been proved the defendant may be found guilty unless the accused explains his possession to the satisfaction of the jury.

/s/ GLADYS TOWLES ROOT,

Attorney for Appellant and
Defendant.

So ordered:

/s/ FRANCIS A. GARRECHT,

Senior United States Circuit
Judge.

[Endorsed]: Filed Jan. 3, 1947.

